ΣΥΝΗΓΟΡΟΣ ΘΑΛΑΣΣΙΟΣ.

A VIEW OF THE ADMIRAL JURISDICTION.

WHEREIN

The most material Points concerning that JURISDICTION are fairly and submissively Discussed.

AS ALSO

Divers of the Laws, Customes, Rights, and Priviledges of the HIGH ADMIRALTY of *England* by Ancient Records, and other Arguments of Law Asserted.

WHEREUNTO

Is added by way of *Appendix* an Extract of the Ancient Laws of *OLERON*.

By JOHN GODOLPHIN, LL. D.

Littusque regimus
Innocuum. Virg. Æn. 7.

LONDON,
Printed by *W. Godbid* for *Edmund Paxton* over against the Castle Tavern neer *Doctors Commons*, and *John Sherley* at the *Pelican* in *Little Brittain*. 1661.

MVSEVM
BRITAN
NICVM

TO THE

Reader.

HE that negotiates about Maritime Affairs, is under *Protection* without *Letters of ſafe Conduct*, as being within the *Sanctuary* of *Jus Gentium*; and the right Timing of a Modeſt Addreſs oft times proves more ſucceſsful then a Confident Argument out of ſeaſon; There ſeems ſome probability, as if this Treatiſe obtrudes not upon the world, or thy patience, like a Tract borne out of due time; nor as if it came like a *Phyſitian* to his Patients Funeral; or as *Suetonius* relates touching the Deputies of *Troy*, ſent to condole with *Tiberius* ſeven or eight moneths after the death of his ſons; If this Treatiſe be out of ſeaſon,

others as well as my ſelf are happily deceived; in which caſe it will ſuffice to ſay with *Philip de Comines*, That *It is very hard for a man to be wiſe, that hath not been deceived.*

For the Method, it is as Regular as the Arguments would afford; though not ſo exact as might have been, if the ſame Metal had been caſt into another Mould; yet not ſo rude and out of ſhape, as to ſuſpect from the diſproportion of the Body that the Soul is ill lodged, or like ſome long-breath'd confuſed Diſcourſes, of late much in faſhion, whereof it may be truly ſaid as was once of the *Romans* two Ambaſſadours ſent to one of their Provinces, whereof one wounded in the Head, the other lame in his feet, *Mittit Populus Romanus Legationem, quæ nec Caput nec Pedes habet*; and which for their prolixity and immethodicality may juſtly expect the ſame anſwer that thoſe of *Lacedemon* gave the *Samnites*, *That they had forgotten the Beginning, underſtood not the Middle, and diſliked the Concluſion.*

The Subject-matter of this Treatiſe is not ſo much *de jure* as *de juriſdi-*

ctione

tione Admiralitatis Angliæ, not ſo much touching the Law of the Admiralty or Sea-Laws, as now received and practiſed in the Navigable parts of the world, as in reference to the Juriſdiction of that Law within this Kingdome of *Great Brittain*; So that it will on all hands be eaſily agreed, that the argument of *Juriſdictions* is *Quæſtio admodum Subtilis*; and no wonder, if you conſider, That that which is *de competentia Judicis & Juriſdictionis*, is *totius juris velut Obex & repagulum*; But Πάντα πᾶσιν, and zeal for the Publick facilitates the higheſt difficulties. To leave the Laws *ſub incognito*, or Juriſdictions *ſub incerto*, are both of National ill conſequence, ſubjecting the people either to Tranſgreſſion through Ignorance, or to unneceſſary expences by multiplicity of Law Suits. *Lex, Lex, & Veritas*, are almoſt *Synonimons*; if either of theſe ſuffer, though but a partial Eclipſe, how great is the darkneſs thereof; If a Juriſdiction, without which the Law is but as a dead Letter, be uncertain, how great is that uncertainty? but the liquid and clear

clear stating and ascertaining of Jurisdictions to their proper and respective Boundaries, beyond which one may not pass to the invading of another, is one of the primary Constitutions of *Jus Gentium*.

This short *View* of the *Admiral Jurisdiction* was in its Origination designed only to prevent a *Vacuum inter alia negotia*, and not to hazard the Censure of a *Superfluum inter aliorum otia*. And although a great part of this Fabrick, be laid on a Foundation of *Civil Law*, yet in regard it is an indispensable duty which every man owes his Native Countrey, to keep, as much as may be, *sub incognito*, from Strangers and Forraigners abroad, what possibly may not be absolutely perfect (for there is no perfection under the Sun) *quoad modum procedendi* at home, *Sumus enim Surdi omnes in Linguis quas non intelligimus*; And in regard this Treatise must recite the very Letter of certain Clauses of several Acts of Parliament, Transactions of State, and Book-Cases of Common Law; And in regard the satisfaction of Merchants and Mariners

ners was the main motive and design of emitting this to the Opinions of men; For these reasons it could neither properly nor profitably speak the *Ideum* of that Law, which is no less adequate to the Admiralty, then currant over all the Christian world.

The just Rights and Customes of the Jurisdiction of the Admiralty of *England*, are here with submission asserted, and consequently therein many of the Priviledges of Merchants and Mariners; and not only of those who have a Birth-right to *England's* Laws of the Admiralty, but also of all such, who negotiating with us, have a Right thereto by the *Jus Gentium*, and National Treaties. The Merchant is *Bonum Publicum*, and such is that Nations Interest whose Merchants do flourish, that to gratifie them with all possible immunities and due encouragement is now become the common policy of all such Kingdomes and States, as reap more treasure from their *Ports* then *Pastures*. It was most true what *Seneca* once said of them, *Mercator urbibus prodest, Medicus ægrotis*; without whom a Com-

De Benefic. 12.

Communalty or Civil Society of men can ſcarce plentifully or honourably ſubſiſt. It was a ſaying with *Baldus*, that famous Civilian, *That the world could not live without Merchants.* Whence it may be rationally inferred, That that Nation is nigh drowning, whoſe Merchants are under water; their Function being to import *Neceſſaries*, and to export *Superfluities*; If therefore ſuch Marine Controverſies as ariſe between Merchant and Merchant, or between Merchant and Mariner, ſhould be removed from the Cognizance of the Admiralty (whereof there is now no fear) *ad aliud examen*, it might prove no fallible Index, but that our Trade and Commerce in too ſad a meaſure might alſo in ſome ſhort time after be exported *ad aliam Regionem.* Here therefore is the Merchant and the Mariner inſiſting not for any thing more then what is according to the known Laws of the Land, and the antient eſtabliſhed Sea-Laws of *England*, with the Cuſtomes thereof, ſo far as they contradict not the Laws and Statutes of this Realm, It will not be denyed, but That *Juriſdictio*

risdictio originaliter radicata est in Principe, & ab eo descendunt Judices sicut Rivuli à Fonte suo. The decision of the Rights of Jurisdictions resides not in any persons of a private capacity, but in that Power that creates and constitutes Jurisdictions; that is, the Prince or chief Magistrate, as the Supream Source or Fountain of all Humane Laws and Judicatories. *Angel. in Rub. D. de Jurisdict. om. Judic.*

Reader, it seems something difficult to determine whether the *Sophistication* of *Truths*, or the *Fucus* of *Errors* hath of late years been the more *Epidemical* cheat in Print, it being sufficiently notorious how that adulterous generation went a whoring after the Press, and what a noisome spawn of illegitimate Brats were then generated of the froth of the brain, not less numerous then spurious, that neither their male-content Parents, nor Religion, Law, Reason, nor Charity are able to maintain. And although this Treatise be of a more generous extraction, yet it is very far from complementing it self with the least vain hopes of exemption from those censures which are common to all

on men.

men. It is worth an *Asterisk* to observe how infeazable it hath been in all ages for the most Innocent to escape this correction; *Aristotle* that Prince of *Peripateticks*, was accused of being too obstruce and obscure, and in many things labours under *Galen's* reprehension; the Dialogues of Divine *Plato* are taxed for being too confused and immethodical; *Virgil* by some is counted but a shallow and weak witted Poet, and by others charged as if he were wholly beholding to *Homer* for his works; and *Homer* himself is derided by *Horace*, as if he were too drowsie a Poet; *Demosthenes* could not please *Marcus Tullius* in all things; *Trogus Pompeius* doth accuse *Titus Livius* his Orations of Fiction and Falsities; *Seneca* was nicknamed, and called *Lime* without *Sand*; *Pliny* is compared to a turbulent River that tastes of many things, but digests few. But to come home to the Worthies of the *Civilians* Profession; for even the most *Orthodox Oracles* of the *Civil Law* have not escaped such undue reprehensions; As some have affirmed that *Accursius* had

no

no depth of Judgement; Others reprove *Bartol* for the length of his *Distinctions*, as if somewhat too *Monstrous* by having too many *Members*; On the other side *Albericus* is blamed for too much Brevity; *Baldus* for inconstancy and instability of Judgement; *Alexander* for the perplexity of his Method; and both the *Raphaels* for their too much subtilty, in some things for their neglect of and carelesness in the more polite Literature, in other things for their non-citing and mis-alledging the *Doctours*; And in a word, those very ancient and most famous Lawyers, that by the profoundness of their Judgement and splendour of their Eloquence have so illustrated the dark and obscure places of the Civil Law, as that they have left the world just cause of Admiration, no hopes of Imitation, even these have not escaped the like misreprehensions; For in the Life of *Iustinian*, *Perinus* (out of *Suidas*) hath a large Invective against *Tribonian*, that *Architect* of the *Pandects*; Besides, who more *Eloquent* then *Ulpian?* who more *Pithy* then *Paulus?*

who

who more *Learned* then *Callistratus*
who more *Acute* then *Papinianus*
who more *Distinct*, and withal *Su*
cinct then *Scævola*? who more *Fr*
and *Fluid* then *Gaius*? who mor
Profound then *Africanus*? who mo
Delightful and *Satisfactory* then *Pom*
ponius? who more *Clear* and *Transp*
rent then *Celsus*? who more *Candi*
and *Ingenious* then *Triphonius*? Ye
all these in their Respective and In
comparable Works have met wit
the said undue Reprehensions. I
this therefore shall chance to mee
with some waspish humours, we mu
consider the Climate; Nor is i
more then wants a President, or les
then needs a charitable Construction
which is the worst Revenge can pos
sibly be executed by such as chuse ra
ther to *suffer* then *offend*.

J. G.

THE

THE INTRODUCTION, OR, Preface TO THE Enſuing *TREATISE.*

THE *Syſteme* of *Juriſdictions* is, as the *Law* it ſelf, above the Notions of any Private Conception; he is ſomething more then of a ſingular Invention, that thinks he can arraign the Verdict of all Ages, *Nihil dici queat quod non prius dictum fuit*; And he is more then of an audacious ſpirit, that dares invade the Laws Prerogative, *Nihil proferri debet, quod non prius Conſtitutum fuit.* Hence it is, that he that writes of that Subject *without Book*, that is, that vents his own Notions, or ſails by the weather-cock of his own Brain, not only confiſcates the ill-ſtowed Cargo of his Intellect, but alſo renders himſelf no

Terent. in Prolog. Enuchi.

leſs arrogant and preſumptuous in the tacite apprehenſions of the Prudent, then ſhallow and ridiculous to the moſt rural Capacities. It is therefore nothing diſhonourable for Treatiſes of this Nature to merit the Application of that Liberty which *Chryſippus* took, of whom it is ſaid, That he borrowed ſo freely from *Authours*, that if his name were but expunged or obliterated out of the Title Page, there would nothing remain that could properly be called his own; It is neither heretical nor diſingenious to accommodate old Truths to new Deſigns, ſo it be done aptly and honeſtly *& ſine animo furandi:* for there is that Credit by way of debt due to the *Authours*, that it is no leſs then Theft to conceal them, whereas one half of the debt is paid, if you duly quote them; yea, they become your Debtours, if by the ingenuity of your Husbandry you raiſe their Credit according to the improved value; But he that conceals the Patrons of his Aſſertions, is aſhamed of his own Craft, robs the Dead, and cheats the Living. He that writes Politicks without prefixing his Principles, comes ſhort of his Duty; But he that writes Law without quoting his Authority, preſumes beyond his Line; he that bluſhes to be ingenious, is aſhamed of his own modeſty; *Plato* borrowed many things from *Pythagoras*; *Ariſtotle* from *Plato*, and *Theophraſtus* from *Ariſtotle*; This Treatiſe hath borrowed nothing but what it intends to pay, here's the acknowledgement of the debt,

debt, full ſatisfaction with intereſt may be expected elſewhere, ſufficient Caution being given in the ſubſequent *Elenchus* of the Creditours.

As Reaſon is the ſoul of the Law, ſo Juriſdictions may be ſtyled the faculties of that ſoul, being reduced to act or exerciſe as they are accommodated to this or that object; Conſequently therefore to confound Juriſdictions, is to obliquitate the Rule of all Humane actions, ſpecially if any thing leſs then *Bonum Publicum*, under a vizor be the Authour of that confuſion. *Mine* and *Thine* divide the world betwixt them; in Private tranſactions they are unhappy Monoſyllables, but in Publick affairs they may be of moſt dangerous Conſequence; Inſomuch that *Seneca* ſaid, The world would be quiet were it not for thoſe two ambitious Pronouns. [a] This *Meum & Tuum* is here underſtood *Collective*, for *Juriſdictio* being of Publick right is not compatible with any Private intereſt excluſive to common good, [b] that being beſide the deſign of *Jus Gentium*, whereby Juriſdictions were Originally conſtituted. [c] The flux and reflux of Juriſdictions are from and to the Prince as Rivers from and to the Ocean, wherein Tranſactions of the greateſt weight and burden are Navigable; And therefore to obſtruct the Current of Juſtice in this or that Channel, may force open the Sluces of the Law to a Cataclyſme of Injuſtice, and diſſolve the Ligaments of the beſt jointed Body Politick

[a] Senec. lib. de Morib.

[b] L. 1. l. eſt receptum. ff. de Juriſd. om. Jud. & l. privatorum. Cod. de Juriſd.

[c] Natta. Conſ. 639. nu. 2. & 99. & Joach. Steph. de Juriſd. c. 1. nu. 19.

in the whole world; And yet if the ſtreams of one Juriſdiction, running too rapid, overflow its banks to the inundation of another, it's moſt juſt and ſafe, ſeaſonably to reduce them to their proper Channels. Were it true what *Bald.* ſays, [d] *Juriſdictiones pennes Principes reſidere quaſi Scabellum*, the Claſhing of Juriſdictions might be an offence only to the Footſtool of Majeſty; but if *Juriſdictio ejus oſſibus inhæret*, as *Tapia* and others aſſert, [e] then it may be of an higher nature.

[d] Bald. Conſ. 333. lib. 1.

[e] Car. Tap. in ff. de Conſt. Prin. cap. 4. nu. 14. & Marant. Diſtinct. nu. 3.

Where divers perſons are concredited with Juridical Truſt or Authority, there the Juriſdiction is either *Separate*, or *Concurrent*, or in *Common*. A *Separate* Juriſdiction may appertain to a certain number of perſons *privative* or *excluſive* to all others, whereby they are externally qualified to take Cognizance either of other Perſons, [f] or of other Cauſes, [g] or of other Quantities, [h] or of other Places, [i] then what other Judges are Juridically qualified for. A *Concurrent* Juriſdiction is that which appertaineth to many *Cumulative*, as when the ſame Caſes are equally ſubjected to the Cognizance of many Judges: yet ſo that each of them, whether one or more, by himſelf or themſelves, may *in ſolidum* hear and determine the Caſe, and he or they only may take Cognizance thereof to whom addreſs by the Complainant is firſt made, and before whom the Suit is firſt Commenced, for in ſuch Caſes prevention takes place;

[f] L. 6. Cod. de Juriſdict.
[g] L. ult. Cod. ibid.
[h] L. 11. cum ſeq. de Juriſd.
[i] Alex. tot. tit. de Offic. Juridic.

L. penult. ff. de pet. t. hæredit. & l. 1. Cod. ubi de Crim. agi. oport.

place; and in all Competent Jurisdictions wherever the Action is first Commenced, there Judgement ought to be given in the Case. [l] Thus the *Emperial Chamber* by an Ordinance there made hath Concurrent Jurisdiction with the *Emperour* himself, [m] save in matters relating to the Fee or Inheritance of the Emperial Crown. A Jurisdiction *in common* appertaineth to many, and that *cumulative*, as to all of them, so to all of them together, and *complexive*; insomuch that one of them may not proceed without the other, the Law obliging all of them to be present together in Judgement. [n] But whatever Jurisdictions there are in a Nation, of how many kinds, degrees, orders, or subordinations soever, This is a sure Rule and without Exception, *Jurisdictiones non sunt confundendæ*; [o] The *Bonum Publicum* is more Rationally stated, and more concerned in the equal administration of Justice, then to admit the least Confusion in that which is the only Expedient to prevent Confusion; for Justice (whose office it is not only to doe that which is equal, but also to remove that which is unequal) is never illustrable through any Mediums that hath the least tincture of Injustice; and although for its material Object, it ever hath some one External action or other, as suppose Equality between Payment and Debt, yet for its Formal Object it ever hath Honesty and Conformity unto, at least an adequate Consistency with Natural reason, comprised in that external Act.

[l] L. 3. ubi cœptum. ff. de Judic.

[m] Gail. l. 1. obs. 29. nu. 3. & obs. 42. nu. 3.

[n] L. tunc autem. 37. ff. de re judic.

[o] L. nemo. Cod. de Jurisd. om. Jud.

Of all Jurisdictions, That of the Admiralty or Sea-Affairs hath been the least beholding to the Auxiliaries of the Press in defence of its Ancient Rights and Priviledges against such as would without offence impair the same; The Reason probably may be either from the paucity of such, as are more specially therein concerned, in respect of that numerous Host or Retinue, that in fealty to the other Jurisdictions are most prompt Notaries on all occasions; or rather in that it is of that excellent use in all Maritime Dominions, that the Friends thereof are well assured, its worth would be better valued, if the want thereof were more smartly felt. The Ensuing Treatise is to assert the Rights thereof in part, the design of whose highest Ambition being only rather to excite others by this hint to supply the defects hereof by a more full and clear illustration of the Rights and Priviledges of so Ancient and Necessary a Jurisdiction, then to convince any by Arguments less persuasive then that Interest whereon some men's Prejudice may be founded. Though Merchants and Mariners *qua tales* be not such able Lawyers as to know *how* their Maritime Cases should be determined according to the exact Rule of Law, yet they are such able Supports to any Nation or Kingdome, that they are not to be left *sub incerto, where* or in what Tribunal to find that Rule under such a quality of Juridical Competency, as not to run hazards by Land as well as by Sea;

yet

yet this under the Notion of a Maritime Cauſe, when poſſibly it is of another Element, may not be ſtrain'd in favour of one Juriſdiction in derogation of another; nor under the notion of Merchants, when poſſibly they are at beſt but *quaſi Mercatores*; For not every one that buyes and ſells, is thence preſently to be denominated a Merchant, but he only who in the way of Trade and Negotiation deals in Moveables for gain or profit, upon deſign of diſpoſing thereof in the way of Commerce either by Importation, Exportation, or otherwiſe, in the way of Emption, Vendition, Barter, Permutation or Exchange. [p] So that he is not properly ſaid to be a Merchant, who once and no more doth buy Commodities that he may ſell the ſame, for it is not one Act that doth denominate a Merchant, [q] but a certain Aſſiduity or frequent Negotiation in the Myſtery of Merchandizing, unleſs he be matriculated or entred as ſuch in the Society or Corporation of Merchants. He alſo may be ſaid to be a Merchant, who by common fame and in the opinion of men is commonly reputed a Merchant. [r] They that buy Wares or Merchandizes to reduce them by their own Art or Induſtry into other forms then formerly they were of, are reputed rather Artificers then Merchants; [s] unleſs by their order they are ſo transformed by the art and induſtry of others upon deſign of ſelling the ſame to gain thereby, in which caſe they may be ſaid to be rather

[p] L. Unic. Cod. de Nund. & Alcear, in L. Mercis 66. & l. Mercis 207. de Verb. Signif.

[q] Accurſ. & alii in l. 1. §. Mercis. ff. de Trib.

[r] Bart. in Rub. Cod. de Navic.

[s] C. ejiciens 88. diſt.

Merchants then Craftsmen or Artificers. And such as buy wares for present money, that without altering the form thereof they may sell the same at a future day of payment at a far dearer price then they were bought, are reputed rather *Usurers* then *Merchants*. [t] But Bankers, Money-changers, and such as deal by way of Exchange are reputed under the notion of Merchants. [u] For whereas it is formerly said that a Merchant deals only in *Moveables*, understand that Money is comprised under that notion. [w] So also are Ships.

The Isle of *Rhodes* anciently was the only Mart of Trade and Commerce in the whole world; Antiquity describes that Isle and the City thereof as the only *Metropolis* of Merchants; who, though they have a Latitude as wide as the *Ocean* in point of Trade and Negotiation, yet they may not in time of war transport Prohibited Goods or Commodities to an Enemy, though designed for the Redemption of Captives. [x] Yet such is the Reputation of Merchants, that Credit is generally given, without the least distrust, unto their Count-Books, unless some Legal Exception may be raised against the same, or other just cause of suspicion. [y] And whereas each Merchant hath his peculiar Mark wherewith his Goods are usually marked, by way of discrimination from the goods of other men, the Law in favour of so laudable a Custome doth presume the goods to be his, whose mark is thereon affixed;

t] C. in civitate. & c. consuluit. Extra. de Usu.

u] Paul. de Castr. in L. in eum. ff. de Instit.

w] L. moventium, ff. de Verb. Sign.

x] C. Significavit. Extra. de Judæis, ubi Abbas.

y] Decii Consil. 40. nu. 3. & Consil. 496 nu. 9.

z] Bald. in Auth. Dos data. Cod. de Donat. ant. Nupt.

fixed; Not that ſuch marks, abſtracted from other Concurrent Evidence, do of themſelves amount to a full proof; only they induce ſuch a Preſumption, as doth (without ſtronger evidence or preſumption on the other ſide more energetical) carry the poſſeſſion for him whoſe marks they are; Nor is it therefore leſs hazardous then unlawful for one Merchant to make uſe of anothers mark, ſave when in time of war they ſtrain a point to drive a Colourable Trade, which, with other the like ſtratagems, the Law will interpret no other then *Solertia* or *Dolus bonus* rather then Trade ſhall be totally obſtructed, or the Merchants quite diſcouraged; and where the goods controverted happen to have the marks of both the parties litigant, in that caſe his is the beſt Condition who hath the Poſſeſſion, till by the other party better Cards can be ſhewed for the Property; [*a*] for a Preſumption grounded only upon the marks muſt ever give place to a Proof of the Title or Property grounded upon an Emption, Permutation, or the like. [*b*] Nor may the Plaintiff *pendente lite*, make uſe of that mark touching which the Diſpute or Controverſie is, till there be a Deciſion in the Caſe. [*c*]

The Intereſt of the Merchant mainly depending on the Mariners, it concerns him to know wherein their Duty conſiſts; a right underſtanding whereof is not with more facility attainable then by a due perſon

[*a*] §. Commodum. Inſtit. de Interdict.

[*b*] L. intra. §. vendentibus. ff. de Minor.

[*c*] Bald. in L. 1. Cod. Ut nemin. Liceat ſine Jud. autoritat.

pension of those things which the Law it self ascribes as faults to Mariners; such in part as these; *viz.* The Mariner may not set sail when under an Embargo or other restraint of Princes; nor in Tempestuous weather; nor after the time limited by Contract; he may not during his Voyage in reference to Ship or Lading, doe ought mis-becoming an honest, able, skilful, and prudent Mariner; he may not stay in Port or Harbour without cause when a fair wind invites his departure; he may not deviate in his Course without just cause, or steer a dangerous or unusual way when he may have a more secure passage, yet to avoid illegal Impositions, he may somewhat change his Course and be excusable; [*d*] he may not unlade his Merchants Goods into another Vessel worse then his own; he may not lade any Goods into a leaky or insufficient Vessel; he may not over-charge or over-lade his Ship, nor stowe Goods above her birth-mark; he may not sail without able and sufficient Mariners, both for quality and number; he may not voluntarily sail by places infested with Pirats, Enemies, or other places notoriously known to be unsafe: he may not transport persons of an obscure and unknown Condition, without Letters of safe Conduct, or other suspected persons, to the rendring Ship or Lading liable or subject to a seizure or surreption; he may not lade any Prohibited or unlawful goods, whereby the whole Cargo may be in danger of Confiscation;

The Skipper or Master is a Mariner, though no common Mariner.

d] L. cum in debito. ff. de Probat.

fiſcation; he may not uſe any unlawful Colours, Enſigns, or Flags, whereby his Ship or Lading may incur a ſeizure; * he may not, being haled at Sea, behave himſelf otherwiſe then becomes a Prudent Maſter; he may not carry counterfeit Cocquets or other Fictitious and Colourable Ship-papers to involve the Goods of the Innocent with the Nocent; he may not with his Veſſel engage among the Rocks, being thereto not neceſſitated by the violence of wind and weather, nor by night deceived or deluded by falſe Lights; he may not refuſe payment of the juſt and ordinary Duties, Port-charges, Cuſtomes, and Impoſts, to the hazarding of any part of his Lading; he may not ſail with inſufficient Rigging, or Tackle, or with other or fewer Cables and Anchors then is requiſite, reſpect being had to the Burthen of the Veſſel; he may not ſail with other Ship-proviſions then what is good and wholeſome, and ſufficient for the Voyage; he may not neglect the well moaring of his Veſſel in Port; he may not ſail without one Cat or more in his Veſſel; he may not ſuffer the Lading to take wet, to be ſtoln or embeziled; he may not permit Debates or Conteſts among his Mariners, to the prejudice of the Merchants Goods; he may not let open the hatches of the ſhip, to endanger the Lading; he may not prejudice any part of the Lading by any indiſcreet or unskilful ſtowing of the Goods, reſpect being had to quantity, nature, and quality thereof; he

* L. 1. Cod. de Navib. non Excuſand.

he may not take up more money upon *Bomeree* or the Gross Adventure then his Interest is in ship or Lading; he may not contrary to Order touch at Ports, not necessitated thereunto by contrary winds or otherwise. Many other are the faults and miscarriages incident to Mariners; these only by way of hint to Merchants, who are the greatest sufferers hereby, having herein very seldome equivalent reparation, the offendors for the most part not sufficiently solvant.

But here note, that he that will charge a Mariner with a fault in reference to his Duty, must not think that a general Charge is sufficient in Law, but he ought to assign and specifie the very fault wherewith he is so charged. [*e*] In like manner he that will infer such or such a sad disaster to have happened or been occasioned by reason of some fault in the Mariners, must not only prove the fault it self, but must also prove that that fault did dispose to such a sad event, or that such a misfortune could not have happened without such a fault precedent; [*f*] wherein the Mariners though legally qualified as good and competent witnesses for acts done a ship-board, [*g*] yet to exculpate and excuse themselves, they are not witnesses without exception, save in certain Cases wherein the Law allows them a toleration by way of Juramental purgation; And in case of loss or damage to the Lading or any part thereof by reason of such disaster occasioned

e] L. Prætor ait, in prin. ff. de Injur.

f] L. non omne, ff. de Stat. Libe. & l. is, ff. de Act. & Oblig.

g] L. Consulu. Cod. de re

ned by or in consequence of such fault of the Mariners, the Merchant hath his election in Law, whether he will sue the Master or the Owners of the Vessel; [b] only he can recover but of one of them; And having once determined his election, he ought to stick to that; In which case if the Master happen to be Judicially condemned by reason of any default in his Mariners, he may detain their wages till payment be made, and satisfaction given for such damage as he suffered by their neglect; for they ought by the Law to refund it out of their wages. [i]

[b] L. 1. §. igitur, ff. de Exercitor. etc.

[i] Arct. post Joan. Fab. in §. item Exercitor, nu. 3. Instit. de Oblig. quæ ex quasi Delict.

Ships and other Vessels of that kind were Originally invented for use and profit, not for pleasure and delight; to plow the Seas, not to lie by the walls; therefore upon any probable design the major part of Part-Owners may, even against the consent, though not without the privity and knowledge of the minor part, set a Vessel to Sea, under such Provisions, Limitations, and Cautions, as by the Law is in that behalf provided; yea, the same thing may be also effected by the one party only, in case of equality in Partnership. [k] But in the choice of a *Master*, where there are several Part-Owners of the same Vessel, not always he that is chosen by the major part, but he that is best qualified for that employment, is according to Law most eligible and to be preferred. [l] If a ship be ript up or taken abroad into pieces, with design of converting the Materials thereof to some other use,

[k] Bart. & Paul. in l. hæc distinctio. §. cum fundum, ff. Locat.

[l] L. non aliter, ff. de usu & habi.

use, and it be afterwards upon other advice or change of mind re-built with the same Materials, This is now another and not the same ship, [m] specially if the keel be ript up or changed, and the whole ship be at once all taken asunder and re-built; It is otherwise if it be ript up in parts or taken asunder in parts, and so repair'd in parts; In which Case it remains still the same ship, and not another, albeit it be so often repaired, that in tract of time there remain not one chip of the Original Fabrick. And although a man repair his ship with plank or other materials belonging to another, yet the ship shall not be his to whom the materials belong, but remains his who repaired it. [n] It is otherwise if one takes another man's planks or materials prepared for the use of shipping, and therewith build a Vessel; for in that case the Owner of the materials shall be Owner also of the ship, for the property of the whole Vessel follows the Keel thereof. [o] But if one prepare Tables and other Implements, as for the use of a dwelling house, or the like, with Oke or Deal belonging to another man, and afterwards with those Implements build a ship or other Vessel, in this case the ship is his who built the same. [p] If a ship be bought, together with all her Tackle, Apparel and Furniture, and other Instruments thereto belonging, in this case and by these words the ships boat is not conveyed. [q] And therefore if by reason of any offence the ship happen to be forfeited

m] L. inter stipulantem, in §. Sacram. ff. de Ver. Oblig. & in l. quod in §. fin. ff. de Leg. & in l. qui res, §. aream, ff. de Solut. & in l. quid tamen, in §. in Navis. ff. Quib. mod. Usufr. amit.

n] L. Mutus, ff. de rei vendic.

o] ff. lib. 6. tit. 1. Leg. 61.

p] L. si ex meis, ff. de acq. rer. dom. & l. si convenerit, §. si quis sic, ff. de pign. act.

q] L. fin. ff. de fund. instruct. & l. Scapham, ff. de evict. & l. *Marcellus*, in §. armamenta, ff. de Rei Vendicat.

forfeited or confiſcate, the ſaid ſhips boat is not confiſcate. [r] If one doth tell that ſhip or Veſſel, wherewith he hath exercited the deteſtable acts of Piracy, whether the parties that ſuffered loſs by ſuch depredations, have any remedy in Law againſt ſuch ſhip now bought *bona fide*, or againſt the buyer thereof now *bona fidei poſſeſſor*, is a queſtion much controverted; Some are of opinion that he hath no remedy in Law, becauſe the ſhip is a ſenſeleſs thing, and not capable of offending. [s] As alſo, becauſe the buyer thereof (ſuppoſing him not conſcious of any ſuch depredations, nor privy to, abettor or partaker thereof) ought not to ſuffer being innocent; [t] Others are of another opinion, for that it is lawful for every man to ſeize the goods of Pirats, [u] eſpecially for that there lies a tacite obligation on the goods of all offendors for ſatisfaction; [w] whence ſome infer that the Merchants who are ſo deſpoyled of their goods, have a Legal recourſe for ſatisfaction on the Pirats goods whereſoever or in whoſe hands ſoever they find them. But the more received opinion is, that whereas it is held lawful for every man to apprehend the goods of Pirats and be blameleſs, it is meant and intended only ſo long or whileſt they are the goods of ſuch Pirates; [x] unleſs you can alſo affect the poſſeſſors of ſuch goods with a participation of the ſame crime. And if any do *bona fide*, either buy or redeem a ſhip or other goods from ſuch Pirats, he may upon

[r] Bald. in L. cum proponas. Cod. de Nautic. fœnore. nu. 6.

[s] L. 1. ff. ſi quo ad. pau. te. di.

[t] Jaſ. in conſil. 170. Nomine Magnifici, &c. Vol. 2.

[u] Bald. Paul. & Sal. in l. autem navigia. Cod. de furt.

[w] Bal. in l. furt. Cod. de furt.

[x] L. in delitis. §. Si extraneus. ff. de Noxa. & Angel. in l. Sive manifeſtus, in §. tam diu, ff. de Com. fur.

upon restitution thereof to the true Proprietor recover of him the price of such emption or the redemption-money. [y] If a ship or other Vessel by stress of weather or through fear of Enemies or Pirats, be forced or chased into a Port, no Duties or Customes or other duties in that case ought to be exacted or paid. [z]

In fraighting of ships, respect is had either to the ship it self, or else to a certain part thereof; as also either by the Moneth, or the Voyage, or by the Tun; for it is one thing to fraight a ship, another thing to take certain Tunnage to fraight; So also one thing to be the Cape-Merchant, another to be an Under-fraighter; and the Law of fraight ordinarily is regulated by the Contract, and varies according to the diversities of Agreement, for Convention makes Law. If fraight be contracted for the *Lading* of certain Slaves, Cattle, or the like, and some of them happen to dye before the Vessel arrives to her Port of discharge, the whole fraight is due, that is, as well for the dead as the living. [a] It is otherwise if the fraight were contracted for the *Transporting* them, in which case fraight is due for no more then are alive at the ships arrival to her Port of discharge, and no fraight due for the dead. [b] If it be not known or liquid, whether the Contract were for the *Lading* or *Transporting* them, the fraight is due for the *Lading*, and consequently as well for the dead as living. [c] If fraight be contracted for trans-

y] L. mulier. ff. de Captiv.

z] L. fin. §. si propter necessitatem. ff. de public. & l. Cæsar. ff. de Public.

Wearing Apparel and Victuals for the ships use, pays no fraight. ff. Naut. Caupo. stab. &c. l. 1. §. quamcunque rem.

a] L. si quis. Cod. de Instit. & Substit.

b] Arg. l. Seio. ff. de annuis legatis. & l. illis libertis. in fin. ff de Condit. & demon. arg. 7.

c] L. qui operas. & l. si ædes. §. cum quidam. & §. fin. ff. locati.

tranſportation of a Woman, and ſhe happen during the voyage to be delivered of a child on Shipboard, no fraight is to be paid for the ſaid Infant. [d] If ſuch misfortune happen to a Ship in her voyage that ſhe cannot proceed therein, the fraight contracted for doth ceaſe in ſome caſes, only for ſo far and ſo much of the ſaid voyage as the ſaid Ship made before ſuch misfortune, fraight ſhall be paid. [e] If the ſhip by reaſon of the fraighters fault, as for Lading Prohibited Commodities, or the like, be detained or impeded, he ſhal pay the fraight contracted and agreed; [f] The Lading of a Ship in conſtruction of Law is tacitly obliged for the fraight; yea, the payment of fraight is preferr'd before any other Debts to which the goods ſo laden are liable, albeit ſuch Debts in time were precedent to the ſaid Fraight. [g] If a ſet time be fixed and agreed between the Merchant and the Maſter, wherein to begin and finiſh a Voyage, it may not be altered by the *Supra-Cargo* without ſpecial Commiſſion *ad hoc*; nor may the Maſter ſail after the time Covenanted, without refunding the damage out of his owne purſe, in caſe any happen at Sea after the ſaid time. [h] A Promiſe being made by a Maſter of a Ship to to ſail *Venice* from the Port of *London* in two moneths, the promiſe is performed if he begin to ſail the ſaid Voyage within the two moneths, though he arrive not at *Venice* within the ſaid time. [i] And the ſailing from one Port to another, thence to a third,

[d] L. Sed & addeſ. to §. Si quis mulier. ff. Locat.

[e] Paul. in l. ſi uno, in §. cum quidam. & §. ubicunq; ff. locat. & Sign. de Homod. Conſil. 195. nu. 6.

[f] L. penult. §. novem. ff. Locat.

[g] Bald. in L. certi juris. in 4. q. in verb. Quid ergo. Cod. Locat.

[h] L. Qui Romæ. §. Callimachus. ff. de verb. Obl.

[i] Ang. Alex. & Jaſon in dict. §. Callimachus.

fourth, &c. and so home to the Port whence she first set sayle, or some other Port of her last discharge, is all but one and the same Voyage, [k] so as it be in Conformity to the Charter Party.

[k] L. Relegati. ff. de pœnis. & l. ult. ff. de Sep. Viol.

As there is no Art more Necessary, so none more dangerous and uncertain, then that of Navigation; insomuch that *Bias* the Philosopher (One of the seaven *Grecian* Sophies) had a Conceit that Navigators and Mariners, when under Sayle, might not properly be reputed either among the Living or the Dead; and *Plutarch* in the Life of *Cato*, relates it as one of *Cato's Three Penitentials* at his death, if ever he conveyed any thing by water when he might have done it by Land; hence it is that the Law is so favourable in Cases of Wreck, and in nothing more consults the reparation of any, then such as by that deplorable Casualty are reduced to misery. Now no man by the Law may be prohibited or denyed the Liberty of Sayling either upon the Seas or any publick Rivers. [l] that is, no man may be denyed that freedome, or prohibited by any Private persons, or other who have not *Jura Regalia* in that Territory, for some Princes and States have in all ages exercised that Prerogative in this point which no lesser Powers can pretend unto; Witness the City of *Pera*, in her Concessions, and Interdictions or Prohibitions, touching a Liberty or restraint of Sayling on the Lake of *Pera*; as also the like by the *Venetians* as to the *Adriatick* Gulfe;

[l] L. 2. §. Si quis in mari. ff. Ne quid in loc. pub. & §. & quidem. Inst. de rerum. divi. & l. uni. ff. Ut in flum. pub. navigare licear.

Gulfe; [*m*] Not here omitting to make an honourable mention of that undoubted Soveraignty which the Kings of *Great Britain* in all ages have had in the Seas thereof. [*n*] Another duty of Merchants and Mariners is Contribution, which is not onely in the case of goods cast over-board for the Lightning of the Vessel, but also in Case of Redemption of ship or Lading, or any part thereof from Enemies or Pirates, [*o*] insomuch that if a Master redeem the ship and Lading out of the hands of Pirates by promising them payment of a certain sum of money, for performance whereof himself remaines as a pledge or Captive in the Custody of the Pirates; in this case he is to be ransomed or redeemed at the Costs and charges of the said Ship and Lading, ratably and proportionably as each mans Interest therein doth amount thereunto. [*p*] And if there be Cash or mony in the Ship; it is not in this case Exempt from paying its share of the Contribution proportionably to Ship and Lading, because the Master knowing the said money to be a Ship-board, was probably the more willing to Redeem the Ship, though at a dearer rate. In a storm, when the Ship is in danger of perishing, it is not lawful for the Master at his own discretion, without advice first had with the Merchants or their Factors or Supracargoes, to cast goods over-board for the Lightning the Vessel, or to Cut down the Mast, or the like; but in case they consent not, and the Master see cause for it,

[*m*] Angel. Consil. 290. & Veronensis.

[*n*] Bellissime, Seld. de Mar. Clauf.

[*o*] ff. ad Leg. Rhod. de jactu. l. 2. §. si Navis à Piratis.

[*p*] Dict. §. si Navis à Piratis. & ibid. Juan. de Hevia lib. 3. p. 2. Cur. Philæ. Naufragio. 13. nu. 18.

he may even against their consents do the same, by the advice of the major part of his Mariners, who at the end of their Voyage are to make oath, that they did the same out of Necessity, and only for preservation of Ship and Lading, and by advice of the Mariners: And the Master in such case is to take as much care as in him lies, that such goods only be ejected and cast over-board as are of the heavyest weight, and least value; [q] for which Contribution is to be made, wherein the ejected goods are to be valued as other of the same species are sold for; And Jewels, though of no burthen to the Vessel, yet in such case are liable to pay their share of Contribution according to their value; And in such Cases the Custome of the Place is to be observed; for by the Custome of some Places the Oaths of the Master and a Third part of the Mariners are required, by the Custome of other Places the Masters Oath with two or three of his Mariners doth suffice. But if only the Ship it self, or any of her Tackle happen by stress of weather to be damnified, there is no Contribution for the same, though the Lading be all preserved. [r] Contribution is to be made and regulated in this manner; First, the goods which are lost or were ejected for conservation of the rest, are to be valued and appraised; then the goods saved are likewise to be estimated, that so the values of each being known, a proportionable valuation may be contributed by the goods saved, towards satisfaction for the goods ejected,

q] Leg. Wisbicens. art. 20, 21, 38, 39.

r] ff. ad Leg. Rhod. l. 2. §. Si conservatis. *The persons of men, wearing apparel, and the Ships provisions are exempt from Contribution.*

ejected, loſt, or thrown over-board; wherein regard is to be had not to what might be got by the goods loſt, but what the damage is by the loſs thereof; which are to be eſtimated not ſo much by what they might poſſibly be ſold for, as by what they coſt or were bought for. Though in truth the more received practiſe and Cuſtome is, that the goods ſaved and loſt are both eſtimated as the ſaved goods happen to be ſold for, the fraight and other neceſſary charges being firſt deducted; and the Eſtimation or Computation is to be made by ſuch skilful Merchants and Mariners as adhere in their judgements and affections to neither party, farther then becomes indifferent Arbitrators; which may be managed with moſt equality and leaſt ſuſpicion or exception, if the appraiſment be made upon oath. And if any in the Ship hath Money, Plate, Jewels, or the like, in any Trunk, Cheſt, Pack, Fardel, or other thing now to be thrown over-board, he ought to diſcover it and ſhew it to the Maſter of the Ship before the ejection, or otherwiſe in caſting up the Contribution, theſe things will come no farther into conſideration, then what the bare Extrinſick value appeared to be. The goods preſerved are by Law as liable to pay Contribution as Fraight, and are tacitely obliged for the one as for the other; and the Maſter may retain them as a pledge in Law as well for the ſatisfaction of the one as of the other; If ſuch ejected goods or the Merchandize be afterwards recovered out of the

Some are of opinion that the goods ſaved are to be valued as they may be ſold for, but the goods loſt as they were bought.

Goods caſt overboard to lighten the ſhip makes no Derelict, §. ult. Inſt. de Rer. Diviſ. & l. 9. §. ult. de acq. rer. dom.

Sea, the Contribution for them ceases, saving for so much as they are thereby deteriorated.

[s] But if by reason of the Masters overlading the Vessel, or by his indiscreet stowing the Goods or the like, such ejection or casting goods over-board happen, in that case no Contribution to be made by the Merchants; but Satisfaction by the Ship, the Master, or Owners thereof. [t] If to avoyd the danger of a Storm, the Master cut down the Masts and Sayls, and they falling into the Sea are lost; this dammage is to be made good by Ship and Lading *pro rata*; Not so in case the same had happened by the Violence of the Wind or Storm, or other Casualties. Also no Contribution in case one Ship strike against another, whereby dammage happens; but full satisfaction in case of a fault or miscarriage in either, or an equal division of the dammage in case it happen by a meer Casualty. Lastly, If a Lighter, or Skiff, or the Ships Boat into which part of the Cargo is unladen for the the lightning of the Ship, perish, and the Ship be preserved, in that Case Contribution is to be made; Otherwise it is, in case the Ship perish, and the Lighter, Skiff, or Ships Boat be preserved; for no Contribution but where the Ship arrives in safety. [v]

Within the Cognisance of the Jurisdiction of the Admiralty, and wherein Merchants and Mariners are principally concerned, are also all causes of *Reprizals*, known to us by the Words *Repriſalia*, or *Letters of Marque*, which

s] ff. ibid. l. navis. §. cum autem.

t] Lus Ser. nus. 27. §. & Si. 23. Ad Leg. Aquil.

v] L. Navis. ff. Ad. Leg. Rhod. de jactu.

which in the Law have alſo other Appellations, as *Pignoratio*, *Clarigatio*, and *Androlepſia*; For it is ſuppoſed that thoſe Reprizals now commonly uſed, were firſt introduced in Imitation of that *Androlepſia* among the *Greeks*, with whom it was a certain Right in caſe of Murder, to apprehend and ſeize any three perſons whether Citizens or other of any ſuch place or City, into which the Murtherer had fled for ſhelter, making it his place of Reſidence; and ſuch perſons to keep in ſafe cuſtody, until upon demand the ſaid Murderer were delivered up to Juſtice; This was *Androlepſia* with the *Greeks*, which (as ſome ſuppoſe) gave an hint to other Nations for theſe Reprizals, which are now of practice more common then commendable. The word *Clarigatio* is more acceptable to expreſs *Reprizals*, then either *Androlepſia* or *Pignoratio*; for *Pignoratio* is a word too *General*, and *Androlepſia* too *Special*, as being only by the Authority of ſuch as required the Revenge of Murder, and upon no other accompt then that. The word [*Reprizals*] is from the *French*, *reprendre & repriſe*, that is, to Retake, or to take again one thing for another; albeit this may not be by any Private Authority, but only by the Authority of that Prince whoſe ſubject the Injured perſon is, and only in caſe Juſtice be denyed or illegally delayed by that Prince whoſe ſubject the Offender is: For before any conceſſion of Letters of *Reprizal* or *Marque*, there ought to precede

Demoſthen. in orat. in Ariſtogit.

the Oath of the party Injured, or other sufficient proof touching the pretended Injurie, the certain loss and damage thereby sustained, the due prosecution for obtaining satisfaction in a Legal way, the denyal or protelation of Justice, the complaint thereof to his own Prince, Requision of Justice by him made to the supreme Magistrate where Justice in the ordinary course was denyed, persistency still in the denyal of Justice; all which precedent, Letters of *Reprizal* (under such Cautions, Restrictions, and Limitations as are consonant to Law, and as the special Case may require) may issue by the *Jus Gentium*; for such *Law-Casuists* as question whether *Reprizals* are Lawful, are in that point rather Divines then Lawyers; *Grotius*, who was both, resolves it in the Affirmative; [w] wherein *Nations* as well as *Persons*, the *Jus Civile* as well as the *Jus Gentium* agree the Legality thereof; whether you understand General and Universal Reprizals, which is *quasi Bellum Privatum*, or Special and Particular Reprizals, which is *quasi Duellum Publicum*.

w] Grot. de jur. Bel. lib. 3. cap. 2. nu. 2.

The precedent Requisites being duely observed, Reprizals may issue by the Authority of the Prince, in whom alone resides the power as of making War and Peace, so also of granting *Letters* of *Marque*; And this notwithstanding any Lawes to the Contrary that seem to inhibite the same; [x] But with respect to the National Treaties and Coventions, which in this point may

x] Ne alius pro alterius debito & pœna teneatur. Auth. & omnino, Ne Uxor Marito C. l. providendum. de Decurio. lib. 19. c. titu. Ne fil. pro patre. Auth. imo. C. de act. Cum Similib.

may at times vary and alter the Caſe in Conformitie to ſuch National Contracts. A due Adminiſtration of Juſtice is not the Leaſt ſenſe wherein Princes are ſtiled Gods; To deny or delay Juſtice is Injuſtice; Juſtice is every mans Right who hath not forfeited what he might claim by the *Jus Gentium*; therefore the Prince, within whoſe Territories Juſtice is denyed or delayed, is Accomptable to that other Prince whoſe Subjects ſuffer thereby; and by the Law Subjects may be puniſhed for their Prince's Omiſſions in what the Law of Nations requires. [y] And that Prince who unlawfully detaines the Rights of a Subject under another Prince, or ſuffers it within his Territories to be detained, and in the Ordinary Courſe of Law denies Reſtitution, he may at length be compelled to Reſtitution, *vi & manu militari*. [z]

He that in the way of *Reprizals* apprehends at Sea another mans Goods, ought not to keep them in his own private Cuſtody, and to Convert them by his own authority to his own private uſe, but ought to bring them to ſome Publick Place in order to a Judication according to Law; yet they are to remain with the Captors till by them they are thus brought and ſubmitted to Publick Juſtice; by the authoritie whereof Commiſſion may iſſue for Landing or unlading the ſaid goods, for Inſpection, for Inventoryino, and for Sale, either of ſuch part thereof as upon ſuch Inſpection ſhall appear

y] C. Si Sententiæ. c. 16. de Sent. Excom. in 6. Conſtit.

z] L. qui reſtituere. De rei vindicat.

appear to be *Bona peritura*, or of the whole in case the Court shall see Cause, which is to order payment out of the Proceed thereof to the party to whose use the Letters of Marque issued for and towards satisfaction of his debt and damages, after deduction of all dues, duties, necessary Costs and Charges relating to the Seizure, either Judicially or Extra-judicially; And the said debt and damages (with all Costs and Charges) being fully satisfied, the Remainder or Overplus (if any, which seldome happens in such cases) is to be Restored to their Owners from whom they were taken, and the said Letters of *Marque* thenceforward to cease. Such Letters of *Marque* issue not without good and Sufficient Caution first given in Court for the due observance thereof according to Law, the transgression whereof creates a forfeiture of such Judicial Recognizance or Stipulation; and the Captor for the better management of a Judicial Proof, in order to a right Decision according to the merits of the case, is to produce part of the Seized Mariners to be Sworn and Examined according to Law, as also to Exhibite all the Ship-papers and Evidences found a Shipboard; and till Judication he may not break bulk of his own private authority, nor suffer any imbezilement of the Lading, nor Sell, Barter, or otherwise alter the property thereof, without Special Commission from the Court for so doing.

In

In the Law there are certain Persons and Things Exempt from being Lyable or Subject to Reprizals; They whose Persons are Exempt, have also their goods Free. Reprizals granted against any Kingdome or State, are understood as against such only who inhabit therein, and not against such who though originally of that Countrey against which the Reprizals are, yet inhabit elsewhere, possibly in the same Kingdome whence the Letters of *Marque* issued; for he is not in this point reputed of that Kingdome, State, Province, or City wherein he doth not inhabite, albeit he were born therein; It is not the place of a mans *Nativity* but his *Domicil*, not of his Origination but of his Habitation, that subjects him to Reprizals; the Law doth not consider to much where he was Borne, as where he Lives; not so much where he came into the world, as where he improves the world; provided he hath there *Decenniated* or inhabited Ten years, or less, in case he hath born Office there, or paid *Scott* and *Lott*, or removed his Family thither, or his Estate, or the greater part thereof, or is Naturalized a Denizon of that Countrey.

Reprizals may not be Exercised on Pilgrims, or such as travel for Religion sake, nor on Students, Scholars or their Books, or other Necessaries; Nor on Ambassadors or their Retinue; nor on Women or Children. Likewise Goods found with a Merchant of another place then that against which Reprizals

zals are granted, albeit the Factor of such Goods were of that place, are not subject to such Reprizals; nor ought the presumption of the Place (though strong enough for Condemnation where proof of an innocent property failes) prevail against fuller Evidence. Ecclesiastical persons are also by the Canon Law expresly Exempt from Reprizals; So likewise such persons, as by Storm or Stress of weather are driven into Port, have an Exemption from the Law of Reprizals according to the *Jus Commune*, what the Edict of any particular State in that case may doe, is not here determined; But a ship or Goods belonging to the Subjects of another Prince, against whom Reprizals are granted, coming into a Port, of that State, issuing such Letters of Reprizal, not by storm or stresse of Weather, but to avoid Confiscation for some delict committed at home in their own Countrey, may be subject to Reprizals in Port.

This Right of Reprizals (which as some would have it, answers to the *Saxon Withernam*) is not only admissable in cases of denyal, or protelation of Justice, as when Judgement may not be had within the time prescribed by Law, but also when Judgement is given plainly against the Law, and no Remedy to be had against such wrong Judgement, either in the ordinary course *per viam Provocationis A Appellationis ad Judicem superiorem*, nor in the extraordinary *per viam supplicationis ad principem*; understand

ſtand thus when the matter in Controverſie is *tam quod merita quam quod modum procedendi*, not Doubtful, for in Doubtful matters the Preſumption is ever for the Judge or Court; But a wrong Judgement in matters not Doubtful muſt be redreſs'd one way or other, ſpecially if ſuch be given to the prejudice of Foraigners, over whom the Authority of a Judge, though in his own Juriſdiction, is not ſo exactly the ſame, as over his own Subjects; And although it be a Rule in Law, *Res judicata pro veritate habetur*, yet it is as true, that *Judex male judicans pro injuria tenetur*; nor doth a Judgement or a *Definitive* diminiſh the *merits*, though it may alter the *Caſe*; Therefore *Paulus* the Lawyer held, that a Debtor, that is a Debtor indeed, though Judicially abſolved, yet by nature remains a Debtor ſtill; and therefore when this happens to be a Foraigners Caſe, he may (if all other Legal Expedients fail) for redreſs have recourſe to the *Jus Gentium*, which holds conformity with the Law of Nature. Subjects indeed may not by force oppoſe the Execution even of an illegal Judgment, nor forcibly proſecute their denyed rights, and that by reaſon of the Energie of that Power and Authority which is over them, the Subjects obedience being in the Emphaſis of the Magiſtrates Authority: But yet Foraigners can fly to the *Jus Gentium* to Right themſelves by way of Compulſion, which they could not effect by any Legal proſecution, ſo long as their Right is repa-

reparable by Judgment according to Law, but insearible by reason of the denegation or protelation of Justice, contrary to the regular proceedings of Law. It seems at least *Sanctum jus* if not *plus justo*, that the Goods of his Innocent Subjects that denyed Justice, should be taken and seized for that injustice, wherof they appear no more guilty then the original Complainants: The truth is, this is not introduced by the *Jus Naturæ*, but yet being commonly received by Custome and National practise, is now become qualified for an allowance or tollerration by the *Jus Gentium*; whether this were sufficient for *Nestor* to plunder the *Eleenses* for taking away his Fathers horses, or for others on the like *peccadillos* in this Age, to Centuple their Losses on their Innocent Neighbours for their Princes omissions under colour of Letters of Marque, is easier to question then proper to determine; But whether Christian blood should be ingaged in the quarrel which originally was but of Private Interest, would soon be decided where no Military man hath the Chair. By the Law of Nations all the Subjects of the Dominion doing wrong, whether Natives or Strangers making their abode there, are within the reach of Reprizals; whereby 'tis evident, that Strangers not permanent there, nor under any of the aforesaid qualifications, are excepted; for Reprizals being in their nature *quasi onus Publicum*, are introduced for the satisfaction of Publick Debts, to which

Hom. Iliad. 2.

which Strangers, that are meerly such, are no way obliged, indeed, to the Laws of the Land, where their present being is, they are subject, but yet are not Subjects. And whereas it is formerly said, that *Ambassadors* are Exempt from *Reprizals*, as also their Retinue and Goods, understand it not of such as are Commissionated to any Prince or State in enmity or actual hostility against that Prince who issues such Letters of *Marque*. Lastly, by the Law of Nations in matters of Reprizals, whatever is taken, immediately upon the Capture accrues *ipso facto* to the Captor in point of Property, so far as the Original debt or damage with all incident costs and charges doth amount unto, and the surplus to be restored; which Equity in this case the *Venetians* long since used to the ships they took on this accompt from the *Genuises*; But by the Civil Law, Motitions or Citations after a seizure ought to issue, and the parties concerned are not to carve for themselves, but submit the whole matter to a Judicial Examination, in order to their Satisfaction, which ought to ballance the *Damnum Emergens*, but not to exceed by way of Supplement in reference to the *Lucrum cessans*; for the Law of Reprizals though otherwise rigid enough, yet *Restitutio in integrum* is its ultimate design; and as no man ought to be enriched by anothers Losse, so no man ought to gain by his own Losse, when it may not be repaired otherwise then by Remedies extraordinary, if not unlawful. Having

Gregor. lib. 9.

Having glanced at some general Heads of the Law of the Admiralty *quasi in transitu* by way of Introduction (the least whereof in its due Latitude requiring more Volumes then are Pages in this) and therein the *Custom* paid, with other ordinary Port-charges usual in such cases, It may now be free to sayl from the *Law* to the *Jurisdiction* of the Admiralty, being the Port of Discharge in the Design of this *Adventure*; The Wind seems Fair, the Seas well purged of Rovers, and *Neptune* reinvested with his Trident; The *Ensurance* therefore need run but Low, the Danger is not great now that we have Peace with all *Our Selves*; yea, the Loss is but small though the Ship miscarry, so the Cargo be preserved, for that's of value, indeed a *Jewell*, without which the whole World would soon be *Bankerupt*; So that if it escape the private Arrest of some Fained or *Fictitious Action*, there is no fear of a General Embarg.

Elenchus Authorum;

OR,

The Names of the Authours Quoted in this TREATISE.

Æ Schilus.
Accurſius.
Afflictus.
Africanus.
Albericus.
Alexander.
Alonzo de Chavez.
Andreas Maſius.
Angelus.
Annot. in Sac. Bib. Edit. 1651.
Ariſtotle.
Athenæus.
Aurelius.
Aul. Gellius.
Baldus.
Bartolus.
Bernar. Gerardus.
Boerius.
Boroughs.
Brownlow.
Bullenger.
Cains.
Caiciapulus.
Cagnolus.
Calvinus.
Caliſtratus.
Carbo.
Caſſanæus.
Caſtrenſis.
Caſus.
Cæſars Comment.
Cælius Rhod.
Capolla.
Celſus.
Cicero.
Cominæus.
Conſul del Mar.
Corp. Jur. Civil.
Corp. Jur. Can.
Codinus.
Coke.
Corvinus.
Cowell.

Crook.
Curopalates.
Curtius.
Cynus.
Cothereon. Pet. Coth.
Demosthenes.
Diodor. Sic.
Dion. Afric.
Doct. & Stud.
Domin. Niger.
Donellus.
Durandus.
Faber.
Fascic. de sup. Adm. in arce Londinensi.
Fazellus.
Ferrandus.
Fitzherbert.
Fleta.
Florus.
Forster.
Fragm. Hist. Aquit.
Fragm. Ascript. Polib.
Fulgosius.
Galen.
Gellius.
Gerardus.
Godwyn.
Goldsborough.
Gothofred.
Granat. Decis.
Greg. Gemist.
Grotius.
Herodotus.
Hevedin. Rog. Heved.
Hieron. de Chavez.
Hobard.
Homer.
Horace.
Humindon.
Jason.
Isermia.
Junius.
Justinian.
Larrea.
Leonard.
Leon. Marsisc.
Leunclavius.
Libanius.
Littleton.
Livius.
Lucius Florus.
Lupus de Magistr.
Mainus.
Maranta.
Marsicius.
Malmesburiensis.
Math. Paris.
Masius.
MS. Admin. voc. Liber Niger.
Monstrelatus.
Morisotus.
Mourgius.
Noy.
Omphalius.

Oleron

Oleron Sea-Laws.
Ortelius.
Oſwaldus.
Owen.
Panormitan.
Papinianus.
Paris. Math. Paris.
Paris de Puteo.
Paulus.
Paul. Emil.
Peregrinus.
Perinus.
Petr. Cothereus.
Plato.
Plinie.
Plutarch.
Polybius.
Pompeius Trog.
Pomponeus.
Pruckman. Fred. Pruck.
Ptolimæus.
Purchas.
Purpureus.
Ramus.
Ranulphus Caſtrenſis.
Raphael.
Rhodiæ Leges.
Ridley.
Rodorig. Zamerano.
Rupertus, aliàs *Robertus le Monachus.*
Sabellicus.
Salycet.
Scardius.
Scævola.
Selden.
Seneca.
Siffridus.
Sigebertus.
Sigonius.
Speculator.
Spelm. Conſul.
Spelm. Gloſſar.
Spiegelius.
Strabo.
Suetonius.
Suidas.
Tacitus.
Tapia.
Terms of Law.
Theophanes.
Thucidides.
Tibullus.
Triphonius.
Tullius.
Turpinus.
Tuſchus.
Valer. Max.
Valer. Forſter.
Victor.
Virgill.
Ulpian.
Vopiſchus.
Zamerano.
Zaſius.
Zonarus.

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CHAP. I.

Admiral: *the Etymon or true Original of the word; with the various Appellations thereof.*

THE *Glossographists* and others have digg'd very deep to come at the *Root* of this word; Some are of opinion that the word *Admiralius* is derived from the *Greek* ἁλμυρὸς *Salsus*, or from ἅλμη *Salsugo*, or ἁλμηρὶς *Salsigo*, or from Ἁλμύραρκος καὶ Ἁλμηρὰς *quasi Salmacidus & Salsus, à Salsugine Elementi cui imperat:* [a] from the Saltness of that Element where properly his Authority and Jurisdiction doth reside; [b] *vel quod in salso mari suum exercet imperium.* But this

a] Lupus de Magistr. Paul. Emil. Hist. de Fran. Guaguin. & Morisot. lib. 2. c. 3. de Orbe Maritimo.

b] Morisot. lib. lib. 2. cap. 7.

not seasoned with sufficient reason, is held but as an unsavoury derivation, from the great improbability that any in imposing of *Names* should quit the thing it self, wherein the Denominated is most inherent, and flie only to the more remote qualities thereof; As if you should say that the *Admiral in rebus Maritimis* were rather *Salinarius* then *Marinarius*, as is truly observed by the Learned Sir *Henry Spelman*. [c] So that if you offer this Derivation, though *cum grano vel mica Salis*, it will not pass.

[c] Spelm. Gloss. verb. Admiral.

Therefore others are of opinion that it is derived from the *French* [*Ameral*] signifying an high Officer or Magistrate in Sea-affairs; But this is as if you should say, (*to keep to the Metaphor of a Liquid Element*) That Ice dissolved is the Mother of Water, rather than Water frozen the Mother of Ice; No doubt but [*Ameral*] in *French* now signifies such an high Officer or Magistrate; but where was that *French* word [*Ameral*] when the Office of *Admiral*, by other Appellations almost *homophonous* to that, was in being, but not in *France*? That Office by other Names Appellative not much dissonant to this of *Admiral* was anciently known in the world, when no such thing in *France*; for the *Romans* themselves anciently had not these *Admirales* (for so then called) till *Constantine*, in whose time *isti Admirales Magistratus creati sunt*; [d] that is, among the *Romans*; for they were known to other parts of the world long before *Constantine* the

[d] Petr. Cothereau. in suo Schedul. Magistr. Civil. tit. de Præsibus Provin. & Purpur. in l. 1. col. 30. 9. Ex emp. Dig. de Offic. ejus cui mandata, &c. Cassanæ in Catalog. Glor. Mund. part. 9. Consid. 36.

the *Great*, *Anno* 330. So that it may be truly said that this high Officer or Magistrate in Sea-affairs is in the *French* now rendred by the word [*Amiral*;] But not that the word *Admiral* is thence derived.

Therefore others conceive it is derived from the *Saxon Aen Mere eal*, that is, *over all the Sea*. This passes for a currant derivation and exposition of the word *Admiral* with us; possibly because it sounds both so *prettily* and *pithily*; for we are now as apt as our Neighbours t'other side the water to be *alamoded* as well with fine words as other vanities. Yet this being a derivation of our own *Generation*, it may not be much controverted, specially for that others as well as those of our own Nation, have acknowledged the word *Admiral* to be derived from the *Saxons*, with whom the word [*Hadmiral*] doth signifie *Prafectum maris*.

Others there are who will have it derived from neither of these, but from the *Saracens*, [*Admirantes*] for that in the Infancy of that Empire there were *Quatuor Admirantes, hoc est, Militum Prafecti, qui terra marique pugnarent.* [*e*] But some think that this opinion hath no farther truth then in appearance only; for that the *Sarazens* had no farther use of that office then in the *Holy Wars*. Therefore those *Ancients* that derive the word much higher then the time of the *Holy Wars*, will have it drawn rather from the *Greek* then *Arabick*; So that they seem to come nighest of any to the truth,

[*e*] Morisot. Orb. Marit. lib. 2. cap. 3.

that derive the Pedegree of this word *Admiral* both from the *Greek* and *Arabick*.

For that *Amir* in the *Arabick* signifies *Princeps, Præfectus*; And ἄλιος in the *Greek Marinus*, both which amount to *Admiralius*, or rather to *Amiralius*, *quasi Princeps vel Præfectus Marinus*. And this carries the greater probability with it, for that, as the said Sir *Henry Spelman* obſerves, ſuch *bilingue* Compounds were much in requeſt at the Court of the Eaſtern Empire; And it ſeems yet the more probable, for that in *Homer* we find the word ἅλιος *pro Rectore maris*, or Governour of the Sea; yea, and for *Neptune* himſelfe. Wherefore *Amir*, otherwiſe *Emir*, alſo *Amira*, *Amira*, *Amiras*, and *Amiradis*, do ſignifie *Regem*, *Principem*, *Eparchum*, and *Præfectum*; alſo with the *Turks* and *Sarazens*, it ſometimes ſignifies their *Great Emperours*, and ſometimes their *Proto-ſymbol* or *Preſident* of the *Senate*. And ſo the *Arabick* [*Amira*] or the *Hebrew* [*Amar*] that is, *dixit, edixit: illud præcepit, imperavit*; from whence [*Mamurem*] that is, *præceptum, edictum*; And [*Amirom*] that is, *Dux, Capitaneus, Imperator, Præfectus*. And ſo Ἄρχων or Ἀρχὸς in the Compound; from whence [*Alamiro*

Anno 1216. *in* H. 3. Matth. Paris, viz. *In the wars between the* Chriſtians *and the* Sarazens *in the Land of Promiſe, That* John *K. of* Hieruſalem *with Chriſts* Militia Caſtellanum ab equo ſtravit, & Admiraldum unum.

Admiraldum capio pro Centurione ſive Capitanio, *ſays the Gloſſar. on that word, in that place. And the ſaid* Matth. Par. Anno 1244. *in* H. 3. viz. Poteſtas Januæ, quem Admiratum vocant. *The Gloſſ. there*, viz. Ille Poteſtas, Podeſta, ſive Prætor urbanus, Nunc dierum Admirallii ſive Thalaſſiarchæ munere fungebatur.

[*Alamiro*] (with the Article *al*) ὁ χιλιαρχος, the chief Captain. And from hence the *Spaniſh* [*Almirante*] or according to their ideom, *el Amirante*, and thence by turning *l* into *d* the word *Admirans* by ſome hath been uſed for *Admiral*; whence others alſo, though very corruptly, yet by reaſon of their being ſo Conſonant, have given it other ſuch like names, as *Admirabilis* and *Admirandus*; which words, if compared with the former, will, in the ſenſe of ſuch as have ſo expreſs'd themſelves, be found to be rather *Syncatagorematical* in their Signification, then *Homophonous* in their Accent or Pronunciation: And therefore the ſaid *Archiologiſt* conceives that the word [*Amiratus*] (which in *Malmsb.* is ſo often uſed for *Admiral*) is not thence derived, but rather from [*Amiradis*] the Genitive ſingular of the foreſaid *Amiras*, by an exchange of *d* for *t*, as was uſual; and adds, that the word [*Admiraldus*] is very Legible in the Antiquities of *Turpin* and *Rupert* or *Robert*, the *Monk* [*f*] *quaſi Al Amiradus*, that is, ὁ ἀμιρᾶς, and by an *Apocope* of the letter *d* *Admiral*' [*g*] which others will have to be expreſs'd by the word *Admirarius*. [*h*]

f] This Rob. the Monk was one of K. Johns three Emiſſaries to Miramulalim K. of Morocco, to ſignifie his pleaſure to him, how ready he was to reſign his Kingdome.

g] Fragm. Hiſt. Aquit.

h] Leon. Marſic. in caſinenſ. Hiſt. lib. 3. cap. 44.

This high Officer or chief Magiſtrate in Marine affairs with us is ſtyled the Lord high Admiral of *England*; with the

About Anno 1213. *when* K. John *sent* Thomas Herdinton, Ralph Nicholson, *and* Robert *the* Monk *to the* K. *of* Morocco, *we read* Misit Nuncios ad Admirallium Murmelium, Regem Magnum Aphricæ, Marrochiæ, & Hispaniæ, quem Vulgus Miramumelinum vocat.

Matth. Par. in Johannem Reg.

Ita, sed satis Corrupte, Regem Moroccæ indigitarunt Nostrates. Sed Corruptius adhuc Roger. Hovedin. Almiramisi sive Almiramimoli.

Hovedin. pars poster. in R. 1. pag. 381.

Drungarius Magn. Fragm. Ascript. Polybio.

Greeks Ἀμηρᾶς, ἀμηραῖος, ἀμηραλής; with the *Latines*, *Amira*, *Amiras*, *Amireus*, *Ammiratus*, *Admirallus*, *Admiralis*, *Admirans*, *Admirandus*, *Admirabilis*, *Admiravisi*, *Almiramisi*, *Admiralius*, *Amiralius*. In the Eastern Empire, *Amerii*, *Admirantes*; also *Drungarius*, *Drungarius Magnus*, *Drungarius Classis*, *Drungarius Navigiorum*, *Drungarius mari Præfectus*. With the *Athenians* and others, *Thalassiarchus*, *Archithalassus*, *Magistratus rei Nauticæ Jurisdictionem habens*. With the *Romans* there were *Duum viri Navales*, afterwards *Præfectus maris*, *Præfectus Classis*, *Magnus Dux Classis*, *Archigubernius*. With the *Spaniard Almirante*, *el Amirante*, *Adelantado*. With the *French*, *L' Ameral*, *Præfectus maris & Litoris*, *Custos Limitis Maritimi*, *Comes Litoris*. Besides these there are several other Appellations of this one and self-same high Officer, consonant unto the *Ideom* of such Nations and Countries respectively, where this great Office hath been constituted.

This word *Admirallius*, how it should signifie *Bellicosus* or *Victoriosus*, as *Mat. Paris* hints,

hints, [i] seems not easily to be resolved without a far strained Notion; for, without doubt, of all the presupposed *Etymons* of that word, that which *Junius* gives, seems to be the most Legitimate, that from the *Arabick* [*Amira*] *Princeps*, and the *Greek* [ἅλς] *Marinus*; it being generally agreed that this word is a Compound of an Exotick Extraction from two distinct Languages or Tongues; And therefore although *Gretserus* [k] be pleas'd to be displeas'd with this derivation thereof, yet it is supposed that others without the least hazard of Naufragating their Art of Glossographie, may securely cast Anchor and safely acquiesce therein.

i] Matth. Paris in R. 1. Circa dies istos Rex de Maroch. potentissimus, quem *Mirabilem* mundi Vulgus, vel quod melius, Admiralium Murmulin, id est, Admiralium Bellicosum & Victoriosum nominavit. Et An. 988. Otho 3. Imp. German. cognomen *Otho Rufus*, iste cognominabatur Mirabilis Mundi. Siffrid. Epit. lib. 1. p. 689.

k] Glossar. in Matth. Paris in verb. Admiral.

CHAP. II.

The Original of Navigation, and the Sea-Laws; with the Antiquity of the Office of Admiral *in the Transmarine or Foraign parts of the World.*

THE World was no sooner Created, but *Man* had *Dominion* over the Fish of the Sea *Jure Divino*, which could not well be without Naval *Architecture*, and some skill in the Art of *Navigation*; And it is now no less then nigh 3952 years since *Noah*, that Gen. 1. 26.

that *Totius orbis Thalassiarchus*, or high Admiral of the whole world in that general *Cataclysme*, with his ship, or vessel called the *Ark of Gopher*, laden with a *Cargo* of the whole *Universe*, after a nigh *six* moneths Voiage safely arrived at *Ararat*, his Port of Discharge in *Armenia*; which though re-peopled by his Progeny, yet thence to believe and affirm, [a] That by Naval Acquisitions his son *Sem* proprietated all *Asia*, his son *Japhet* all *Europe*, and his son *Cham* all *Africa*, is more then a meer Historical Faith hath sufficient warrant for, though less then Navigation hath *Antiquity* to possibilitate.

Gen. 6. 14. & 7. 24. & 8. 3, 4. *The Antiquity of Navigation.*

a] Fazel. li. 1. Decad. 2. Rer. Sicul. & Moriſot. Hiſt. Orb. Marit. l. 1. c. 1.

Whether *Jupiter* King of *Crete*, now the Isle of *Candie*, did purge the Seas of Pirats, and his son *Minos* by Sea-fights beat the *Athenians* into Tributaries, is also a question more ancient then certain, or easie to be resolved; [b] yet that *Theseus* son of *Ægeus*, King of *Athens*, vanquished *Taurus* then *high Admiral* to *Minos*, is asserted by good Authority, [c] and drowned him in the Sea, *hinc Fabula Minotauri*. [d] But the Master or Steersman of *Theseus* his ship, not remembring to advance or display the *White Eagle* as the *Ensign* of *Victory* at his approach on his Arrival to *Crete*, his Father *Ægeus* betwixt fear and fury cast himself headlong into the Sea, which gives it the name of the *Ægean* Sea in the *Archipelago* to this day. In those days lived *Dedalus*, who to avoid the Tyranny of *Minos*

b] Sabellic. Ænead. 1. l. 1. & 4. Plutarch. in Theseo.

c] Thucid. l. 1. c. 1.

d] Moris. Ubi supra.

nos fled, from *Crete* into *Sicily*, but the *wings* wherewith he is feigned to have fled, the more modeſt *Mythologiſts* expound to be only the *Sails* of his ſhip. [e] Some are of opinion that former Ages were ignorant of this Art of Navigation, for that they ingraved *Non ultra* upon *Hercules* Pillars: The Nations about *Pontus* ſuppoſing no Sea in the world like their own, and doubting whether there were any other Sea then that only; whence *Pontus* became a word uſed for the Sea in general; though *Prometheus* according to *Æſchilus* the *Attick* Poet doth challenge all the glory of this Art of Navigation to himſelf; whom, among others who boaſted themſelves as Authours of this Art, the *Rhodians* envying, preſumed to give Laws, and to preſcribe the Rules of *Naval Diſcipline*, in order to the better government of *Maritime* affairs, [f] which were now occaſionally introduced into the world by this *Art* of *Navigation*; which Laws are found diſperſed among the ſeveral Titles of the *Civil Law* by command from the Emperour *Juſtinian*.

e] Greg. Geniſt. lib. 1. Rer. Græc.

The Antiquity of the Sea-Laws, or Laws of the Admiralty.

f] Leg. Rhod. in Leuncla. Jus Græc. Rom. Tom. 1.

This Iſland of *Rhodes* in the *Mediterranean* or *Carpathian* Sea, was by reaſon of the multitude of their ſhipping and great commerce, [g] no leſs famous for their *Sea-Laws*, then for their Monſtrous *Coloſſus*; The one was no leſs the Wonder of *Reaſon* in the infancy of Trade, then the other of *Art*, though *That* the greateſt of the *Seven*

g] Gloſs. mag. in l. 1. ff. Ad Leg. Rhod. & in Decre. diſt. 2. c. Rhodiæ.

in

in all the world; This appears by that memorable and known passage of the Emperour *Antoninus Pius*, who in Answer unto *Endemon's* complaint concerning the seizure of his ship-broken goods by the Customers of the *Cyclides* in the *Archipelago*, referres him for Justice to the *Rhodean* Laws, professing that although he were *Lord* of the *World*, yet the *Law* was of the *Sea*. [b] To which *Rhodian* Law several other Emperours, as *Tiberius*, *Hadrian*, *Vespatian*, *Trajan*, *Lucius Septimius*, *Severus* and others do referre all Maritime Controversies; [i] yea, for many hundred of years the *Mediterranean* and most parts of the Christian Ocean, where any Traffick or Commerce was, subscribed to the Law of *Rhodes* in the Decision of all matters of *Admiral Cognizance*.

b] L. depræda-tio. ff. Ad Leg. Rhod. & Le. unclavius. Ubi supra, in Leg. Rhod.

i] Leuncla. in prin. LL. Rhod.

But some there are who by no means will admit that the *Rhodians* should thus Monopolize the glory of advancing the Common Interest of Mankind, as if the Law of the Sea was born into the world only by their Obstetricy; and therefore will have the Origination of the Sea-Laws attributed to the *Phænicians*; who as they are by some accounted the Authors of *Arithmetick* and *Astronomie*, so also of *Navigation*; whence is that, *Prima ratem ventis credere docta Tyros*. They were the First that took the observation of the *North-starre* in supplement of that Navall mystery. These *Phænicians*, who came with *Cadmus* into *Greece*,

Tibullus.

as

as they Civilized, the *Grecians* by their Sciences and other Literature, [*l*] ſo they exceedingly debauch'd them by their Luxurie, and inſatiable avarice, which together with their Wares and Merchandiſe they firſt imported into *Greece*. [*m*] Theſe were they that tranſported *Io* (whence the *Ionean* Sea is ſo called) out of *Greece* into *Ægypt*; and were the Firſt that deſcryed the *Two Poles*. [*n*] This *Phœnicia* is the Sea-Coaſt of *Syria*, [*o*] The *Greeks* call this Sea-Coaſt *Phœnicia*, but the *Hebrews* call it *Chanaan*, and the Inhabitants *Chanamites*. [*p*] *Dionyſius* alſo is of opinion that the *Phœnicians* were the Firſt *Mariners*, *Merchants*, and *Aſtronomers*, [*q*] and *Tyrus* the *Maritime Metropolis* thereof; whoſe Trade and Commerce was ſo great and remarkable in that *Æra* from *Adam*, and conſequently her Pride and Luxurie, that Leſs then Two whole Chapters of the *Sacred Record* will not ſuffice to deſcribe the vaſtneſs of the one, and the Judgments of the other. This City *Tyrus* is there ſtyled a Merchant; All whoſe Ships were made of Firre, their Maſts of Cedar, their Oares of *Baſhan* Oke, the Hatches of Ivory, the Waſt clothes, Vanes, Flags, and Pendants of Purple and Scarlet, the common Mariners were the *Zidoneans* and Inhabitants of *Arvad*, their Calkers were the Ancients of *Gebal*, and their Steers-men or Pilots where the wiſe men of *Tyrus*.

[*l*] Herodot. Terpſi.

[*m*] Diodor. l. 5. c. 15.

[*n*] Moriſon. in Orb. Marit. l. 1. c. 1.

[*o*] Strabo l. 16.

[*p*] Andr. Maſius in Joſ. 5.

[*q*] Dionyſ. Afric. in verſ.

Ezek. cap. 26, 27.

cap. 27. v. 3.

cap. 27. ver. 5, to 9.

To theſe may be added the Inhabitants of *Caria*

Caria in *Asia Minor*, for it is upon good Records of History that these also were anciently reputed Lords of the Sea; as also the Inhabitants of *Corinth*; Likewise the people of *Ægina*, one of the Isles of the *Cyclades* and of *Ægypt*; All these respectively have challenged to themselves this honourable invention of the Art of Navigation. [r] But the First that invented Ships on the Red Sea & sailed thereon, is said to be King *Erythrus*, whence the Red Sea took its name of *Erythreum Mare*. [s]

There are others who ascribe this Art of Navigation to the *Carthaginians*; [t] This seems to have more then *fumum probationis* in it; for that these *Pœni* or *Carthaginians* originally were *Phœni* or *Phœnicians*, [u] it is most undeniable that their Naval Discoveries attempted by *Hanno*, [w] by *Hamilco*, and other *Carthaginians* are no less famous upon Historical Record, [x] then their Three great though unfortunate *Bella Punica Maritima*, when *Hannibal* himself was Lord high *Admiral*, which began in the 158 *Olympiad*, and concluded with the sad *Catastrophe* of that famous City of *Carthage*, then 700 years old, in the last year of the 158 *Olympiad*, [y] whereby *Rome* by her Conquests lost the glory of a Competitor for the worlds Empire.

Now when the *Roman* Empire (which is so commonly mistaken for the *Beast* with ten horns, mentioned in the Prophet *Daniel*, with Teeth of Iron, and Nails of Brass; which in

r] Herodot. l. 1. & Plin. l. 5. c. 5. & 19. & Athenæus Deipn. l. 1.

s] Morisot. ubi supra. *The Egyptians used to coast the shores of the Red Sea upon Rafts, divided by King* Erythrus.

t] Plin. Nat. Hist. l. 7.

u] Dom. Nig.

w] Ramus.

x] Diodor. Sicul. l. 5. c. 7. Gen. Chron. & Dom. Nig.

y] Morisot. Orb. Marit. l. 1. cap. 16. & Polyb. Plin. Aurel. Victor. Livie, Sabel. Ennead. Val. Max. Sigon. Lucius Florus, & alii.

Dan. 7. 7, 19, 20.

in truth is meant of the *Syrian* Monarchy under the *Seleucidæ*, ſo called from *Seleucus Nicanor*) was ſhattered and diſacerated, whereby a very dark and diſmal Eclipſe enſued generally on all Laws, Neceſſity then, which hath no Law, occaſioned new Laws, and bad manners at Sea begat good Laws on Land, yet not ſo much a Creation of new Laws that never were before, as a Reviver or Reſurrection of the former out of the Cinders of that fallen Empire, together with ſuch Additionals as Time, Experience, and Negotiations had adminiſtred occaſion for, eſpecially to ſuch parts of the world as by their Neighbourhood to the Sea were moſt converſant in Naval Expeditions and Maritime affairs. Hence it is, that in ſupplement of the forementioned Sea-Laws all the chief Towns of Commerce and Traffick on the *Mediterranean* contributed ſpecial Sea-Conſtitutions and Ordinances of their own for the better regulation of all Maritime Occurrencies; Such were the Sea-Laws publiſhed by divers Emperours of *Rome*, alſo by the Inhabitants of *Piſa*, by the *Gennieſes*, by thoſe of *Meſſene* in *Peloponeſus*, of *Marſelleis*, *Venice*, *Conſtantinople*, *Arragon*, by the *Maſſilites*, *Barcelonians* and others. [z] As alſo the Laws, of *Oleron*, nigh 500 years now Received by moſt of the Chriſtian world, ſpecially the *Mediterranean*, as the Legal Standard of all Naval Diſcipline, and for Deciſion of all Maritime Controverſies; For the *Rhodian* Laws

Vid. Annot. in Dan. per Theolog. Conv. Edit. an. 1651.

The Readers of the Leſſure for the Art of Navigation *at* Sivil *have publiſhed divers Treatiſes concerning* Marine Cauſes, *viz.* Hieronymo de Chavez. Alonzo de Chavez, & Rodorigo Zamerano.

[z] Conſul. del mare.

Laws being grown somewhat Superannuated and obsolete, these *Laws* of *Oleron* succeeded the other, and were published in that Isle, then belonging to the Dutchy of *Aquitane*, by King *Richard* the *First*, at his Return from the *Holy Land* in the Fifth year of his Reign, the said Isle at that time being under the Dominion of the Kings of *England*.

As to the Original of the Soveraign Command at Sea in the Infancy of Time (though very uncertain) yet divers Nations, among which chiefly the *Assyrians*, *Macedonians*, *Persians*, *Egyptians*, *Romans* & *Carthaginians* have ascribed it to themselves; But the *Greeks* confidently assert, that *Minos* King of *Crete* had the first Soveraign Empire over the Sea, and thence would fain have it over our Faith also, as if *Saturn* King of *Crete*, seeing his son *Neptune* to have invented the Art of Navigation, gave him the Command of his Navies at Sea, which he managed with such success, that after-Ages sacrificed to him as to a God of the Sea; So that *Minos* being descended of *Saturn* by his son *Jupiter*, having afterwards obtained the Superintendency and Guard of the Seas, left it to his Successours. Notwithstanding which, the *Syrians*, *Egyptians*, *Cyprians*, *Rhodians*, but specially the *Phœnicians* have in all former Ages had the honour of being reputed the most valiant and expert Artists at Sea in Maritime affairs, and that from the excellent Conduct and Government

vernment of their Navies beyond all other Nations and Countries whatsoever. But the *Corinthians* are supposed to be the first that ever formed or modelled Navies at Sea in a Classical way. [*a*]

The *Athenians* had two chief Magistrates for the Maritime affairs; The one was to provide such a number of ships for this or that design, each Captain having in charge to see to the Equipping of his own vessel. These Captains they called *Trierarchy*. The other had power of setting them to Sea, and of ordering them home again at his pleasure, whom they called *Magistratus rei Nauticæ Jurisdictionem habens, qui Trierarchis jura reddebat*, and ordered the several Squadrons to such or such stations and places of *Rendezvous*, and discharged them as he thought fit. This was That *Thalassiarchus*, or *Admiral* of the *Athenians*, [*b*] who sometimes had more *Admirals* then one at once, as *Nicias* and *Demosthenes*; at other times but one only, as *Alcibiades*, *Pericles*, *Simon* and others. Likewise under *Alexander* the *Great* and his Successours, Kings of *Syria* and *Egypt*, there were divers *Admirals*, whereof some were *Grecians*; others of other Countries, such were *Nearchus*, *Onesicratus*, *Beton*, *Diognet* and others; As also *Patroclus*, under *Nicanor* and *Selencus* of the *Syrian* Monarchy; But most Memorable is that Commission which was by *Ptolomeus Philadelphus* given to *Dicearchus*, as if he had been to take an exact

a] Thucid. Libanius, cels. Rhod. 21. c. 3.

b] Herod. 6. Thucid. 4. & Demosth. pro Clesiph.

act measure of the Circumference of the whole world by a Line of Navigation.

Among the *Phœnicians*, the *Tyrians* and *Zidonians* were the most eminent in all Maritime affairs, as was formerly hinted. These not only transported from place to place varieties of Merchandizes till then unknown to other parts of the world, but also made divers new Discoveries, and planted Colonies therein, as at *Utick*, *Hippone*, and *Lepte* in *Africa*; at *Thebes* in *Greece* and *Egypt*; and at *Gades* and *Carthage*, that *Carthage* which is in *Spain*; But of all *Africk*, the other *Carthage*, once Lord of the *Levant*, the chiefest for Sea-affairs; whose *Admiral Hanno* by order of the Senate discovered the utmost Coasts of *Africk*, even to one degree of the Æquinoctial; And their other *Admiral Hamilco* discovered all that part of *Europe*, which till then lay as *sub-incognito* to the *Carthaginians*.

In the Eastern Empire he that was high *Admiral* was styled *Drungarius*, as *Drungarius Navigiorum Constantinopoli*; *Drungarius Classis*; *Drungarius mari Prafectus*; *Drungarius Magnus*. [c] Although some are of opinion that this was a general word with them, or a word which signified Generals as well by Land as by Sea, *Qui Drungis, hoc est, globis militum imperabant*. [d] This *Magnus Drungarius Classis* was a subordinate Officer or Naval Magistrate under their great Duke, [e] and was also styled *Ameralius*, which with them

was

c] Morisc. Orb. Mar. l. 2. c. 5. ubi Zonarus, Codinus, Bulenger. Imp. Rom. l. 4. c. 35.
d] Vopiscus.
e] Curopalates in Official. Aulæ Constant. vixit an. cir. 1059.

was likewise a Common Appellation for Terrene Princes; Thus the *Tyrant* of *Babylon* was called *Amiralius*; [*f*] Thus *Huntindon* speaks of twelve *Amiralios Paganorum*, that were slain at the Siege of *Antioch*. Thus *Matth. Paris in Will.* 2. speaks of 29 *Reges & Amiralios* at once appointed for the Warres by *Corbaranus*. Thus *Robert* the *Monk* [*g*] makes mention of the Son of *Cassianus* King of *Antioch*, and twelve *Admiraldi* of the King of *Babylon* slain in battel, whom with an Army he had sent to aid the said King of *Antioch*. Thus the Agents or Ambassadours of the the King of *Babylon* styled the said King himself *Admiraldum*. [*h*] *Dominus noster Admiraldus Babyloniæ, mandat vobis Francorum Principibus Salutem*. Thus *Nabuchodonosor* King of *Babylon* was styled *Admiralius*. [*i*] Thus we also find a Chieftain of a Bow-Militia styled *Arcubalistariorum Admiralius*. [*k*] So that anciently this word *Ameralius* or *Admiralius* did signifie as well the Commander in chief of the Armies by Land as of the Navies by Sea, and sometimes the office or dignity of Kings and Princes or other Soveraigns of Supreme Authority; but this you are to limit only to the *Turks* and *Asiaticks*.

Again, In the Eastern Empire there were no less then Four *Admirals* or *Amirai* (there properly so called) at once, for that *Mahomet* or rather *Muhammad* appointed Four Prætors in the Kingdome of

f] Huntindon. qui sub Steph. Reg. 1148. floruit & Sigeberti Auctuar.

g] Rupertus aliis Robertus Monachus vixit An. 1095. Hist. suæ de Bello Saracenico, l. 4. *These are the same twelve* Amiralios *mentioned by* Huntindon.

h] Robertus, ibid. l. 5. in prin. & Turpinus Archiep. qui floruit an. 803. lib. de Gest. Caroli Mag. cap. 17. [*Si illus sit*] *says the Learned Sir* H. Sp. *in his day, and we in ours.*

i] Auct. Frat. Hist. Aquitan.

k] Monstrelet.

the *Sarazens* which were called *Amerai*.[l] And that *Muhamed* a little before his death constituted Four *Amerais, qui debellarent omnes ex genere Arabum Christianos*. [m] These Four *Amerai* were also called *Quatuor Admirantes*. And of these Four *Admirals* with the *Sarazens*, the one had the Sea-Command of *Egypt* and *Africa*; two others thereof divided the *Spanish* Coasts betwixt them; and the Fourth had *Palestine* and the Coasts of *Syria*. But many are of opinion that before *Charlemaigne* the *Sarazens* had but one *Admiral*, viz. *Addala*: after him *Aron*; and after him *Mabarmad*: which *Charlemaigne* having war with his Brother *Haldala*, and being more then half conquered by him, condescended that the *Sarazens* should have two *Admirals* for one. And *Turpin*, who was Secretary to the said Emperour *Charlemaigne*, acquaints us with an *Admiral* of *Babylon*, who came to the succour and relief of the *Sarazens* of *Spain* against the *French*; as also of another *Admiral*, viz. *Galaffre*, a very potent Favorite with the said Emperour. [n]

Under the *Roman* State, when *Pompey* banded with *Cesar* for the Soveraignty, there were several Admirals, well nigh as many as the Nations were which aided either party with Shipping, as the *Egyptians*, *Asiaticks*, *Rhodians*, *Syrians*, *Achaians*, and others, over whom *M. Bibulus* was Lord high Admiral. But when the Government

was

l] Sigebert. in suis Chron. an. 630. Chro. de Flandr. c. 16. & 48.

m] Theophanes. in Chronico, à Moursio citatus.

n] Turpin. Hist. de Charlemaigne, cap. 17. & 20.

was reduced to an establishment; the Admiralty was settled also; which not long after was again divided into two parts, for there was one Admiralty at *Misene* and the adjacent Ports for the South; another at *Ravenne* towards the East; which two for distinctions sake they called the *High* and *Low* Seas; each whereof was under the Command of his proper *Admiral*, whom they called *Prafectus Classis*, as the Captains of their Ships were known by the style of *Navarchi*.

It is also evident that in the *Roman* Empire there was anciently a Company or Society of Owners and Masters of Ships, as also of Merchant-Adventurers at Sea in the Isle and City of *Rhodes*, which above all other places in the world had once the Prerogative in deciding all Maritime Controversies; Insomuch that the Emperour *Antoninus*, who though Imperious enough in styling himself *Totius mundi Dominus*, yet in all Nautical Controversies subscribed to the *Rhodian* Law, acknowledging that though himself was Lord of the world, yet the other was of the Sea. [o] There were also very Ancient Laws made and published by those of *Rhodes*, who were most expert at Sea, as well touching Navigation, as Merchant-affairs, where the use thereof was of no less Consequence unto, then of Antiquity in that *Mediterranean* Isle. [p] The Assertions upon Historical Record touching the Excellency of their Sea-Laws,

o] L. 9. Deprecatio, Dig. Ad Leg. Rhod. de Jactu.

p] C. Rhodia, 2. Distinct.

their incomparable skill in Navigation, and the Trophies of their Naval Victories are almost incredible. [q]. But this so famous Isle being at length reduced from the glory of a Splendid to the Eclipse of a Decaied Merchant, by reason of the many irruptions and incursions made thereon by several Nations, specially by the *Turks*, a little before the Reign of *Charles* the *Great*, (when about the same time the *Turks* also possessed themselves of several other Isles in the *Mediterranean*) the Gallantry of the *Rhodian* Navies soon after vanished; which at length (as some *German* Authours would have it) was thence translated to the *Oriental* Ocean or *Baltick* Sea; For that *Wisby* in *Gotland* anciently prescribed the Sea-Laws to Merchants and Mariners; whereunto (as afterwards to *Lubeck*) the Neighbouring Cities did usually appeal in all affairs of Maritime Cognizance.

q] Aul. Gell. l. 7. Noct. Attic. cap. 3. & Fred. Pruckman in sect. Soluta Potestas, cap. 5. nu. 134. usque ad nu. 149. p. 186.

The word *Admiralius* from the Eastern Empire was first transported into *Italy* and *Sicilia*, thence into *France*, and from thence into *England*. The first high Admiral in *France* (as supposed) was one *Rutlandus*, so called by *Æginardus* in the Life of *Charles* the *Great*; others called him *Rolandus*; he was Constituted high *Admiral* of *France* about the time of King *Pipin* or *Charles Martel*. [r] Yet others are of opinion that the office of *Ameral*, that is, *Admiral*, was known to the *French* first in the daies of *Lewis* the seventh, from whose time

Comes Maris.

r] Mariser. Orb. Mar. l. 2. c. 7. in pr. n.

time till *Philip* the fourth there was only one *Admiral*; After that, there were two *Admirals* in *France* at the same time. [s] And afterwards more then two at one and the same time, each dividing his Jurisdiction according to the Coasts of their several Provinces respectively. [t] This high Officer *L' Ameral* in point of dignity is next to the High Constable of *France*. Anciently there were three *Admirals* in *France*: one in *Aquitane*, another in *Brittany*, and the other was *Generalis in Francia*; which three are now reduced to one, who doth exercise his Jurisdiction at the *Marble Table in Palatio Parisiensi*. And whereas it is by some supposed that *Rutlandus* alias *Rolandus* (as aforesaid) in King *Pipins* daies was the first *Admiral* of *France*, yet the more probable opinion is, that either *Enguarrantus Dom. de Causy* in King *Philip* the third's time; Or *Americus* Vicount of *Narbone* in King *Johns* time, was the first that ever had the honour of that high Office in the Kingdome of *France*.

[s] Idem l. 2. c. 9. in prin.

[t] Bernard. Girard. de Stat. & Succes. rer. Galliæ l. 4. 2. Calais. Admirallus seu Comes maris in Gallia, post Constabilem præfertur.

An. circ. 1280.

An. circ. 1336.

CHAP. III.

The Antiquity of the Maritime Authority, together with the Office and Jurisdiction of the Admiralty within this Kingdome of Great Brittain.

IN the precedent Chapter it is said, that the name of *Admiralius* first came out of the Eastern Empire into *Italy* and *Sicily*, thence into *France*, and thence into *England*; And this (as the Learned Sir *Hen: Spelman* doth suppose) after the time of the *Holy Warre*. For that, as he observes out of *Hovenden*, when King *Rich.* the first prepared his Navy for that design, he appointed no single person to the Command in chief of that Navy by the name or style of Admiral, but deputed five several persons * to that Command, by the name or style of *Duciores*, *Justiciarii*, & *Constabularii totius Navigii*. [a] The said Learned Authour comes something nigher to our times, and says that this Appellation or style of *Admiral* seems not to be received with us in *An.* 8 *H.* 3. for that the King in his Grant at that time to *William de Lucy* expresses himself only by the words of *Concessit Maritimam Angliæ*, without any mentioning of the word *Admiral* in that Patent. Nor yet in the forty eighth year of his Reign, for that he then Constituted *Tho: de Moleton*, *Capita-*

* Gerard. Ancien. Archiepiscop. Bernard. Baon. Episc. Robertus de Sabul. Richardus de Canvil. Willi. el. de Forz de Ulerum (opinatur) Oleron.

a] Spelm. Glos. ex Hovendeno. An. Domini 1264.

Capitaneum & Custodem Maris (non Admirallium;) So that he is of opinion, that this high Officer was not known to us here in *England* by the name or style of *Admirallius* till the beginning of *Ed.* the first's Reign. And that *William de Leiburn* was the first with us that had the dignity of that Office by the style of *Admiral*, who at the Assembly at *Bruges*, *Anno* 15 *Ed.* 1. was styled *Admirallus Maris Regis*. And that soon after the said Office became Tripartite, *viz. Anno* 22 *Ed.* 1. when the said *William de Leiburne* was made *Admiral* of *Portsmouth*, and the adjacent parts; *John de Botecurts* of *Yarmouth*, and the Neighbouring Coasts thereof; and a certain *Irish* Knight of the *West* and *Irish* Coasts. After whom succeeded three other *Admirals* for the same Divisions in the 19 year of *Ed.* 2. *viz. John Otervin*, *Nicholas Kiriel*, and *John de Felton*. And in those daies the *Admiral* was often styled not *Admirallus maris*, but *Admirallus flotæ Navium*, *id est*, *Classis*, or the *Admiral* of the *Navy*. And this *Admiral* had his power divided into two stations; the one was the *North* station, which began at the mouth of the River of *Thames*, and thence extended it self *Northward*, comprising *Yarmouth* and all the *Eastern* shore. The other was the *West* station, which beginning likewise at the mouth of the River of *Thames*, stretched it self *West-ward*, comprising *Portsmouth*, and all the *South* and *West* of *England*. But the

An. Domini 1286.

An. Domini 1295.

An. Domini 1325.

first that was ſtyled *Admirallus Angliæ* was *Richard* the younger ſon of *Alan* Earl of *Arundel* and *Surrey*, in the tenth year of *R.* 2. [*b*]

Notwithſtanding all this which hath been ſaid, intimating that *William de Leiburn* in the 15 of *Ed.* 1. was the firſt in *England* that had this Office by the name or ſtyle of *Admirallus*; yet it is evident by *Matth. Paris in H.* 1. (which is about 150 years before that of *Ed.* 1.) that at that time there was mention made of one *Balac Amiralius* here in *England*, who in Fight took and ſurprized *Jocelyne* Earl of *Edeſſa*, [*c*] with his Couſin *Galeranus*. But at what point of Time preciſely that Office by the ſtyle or Appellation of *Admiral* was firſt known in *England*, it matters not much, ſince the thing it ſelf, which ſignified that Office now known to us by the ſtyle of *Lord High Admiral*, and the Juriſdiction thereof hath ever been in this Kingdome time out of mind; This will the more evidently appear if you conſult the Records of Hiſtory, and compare them with others National, touching that Ancient Dominion the Kings of *England* have ever had over the Seas of *England*, together with that Maritime Juriſdiction which hath ever aſſerted the ſame. That the Kings of *Great Britain* have an undoubted right to the *Soveraignty* of the Seas of *Great Britain*, none but a few *Mare Libertines* (and that for their own Intereſt) ever ſcrupled. Sir *Hen: Spelman* gives us an Account of a very Ancient Record

b] Spelm. Gloſſar. verb. Admiralius. In temp. W. 1. *Odo* Admiralius.

1ta Spelm. Gloſſ. De Admiralio Gall. An. 1142.

c] Edeſſa, *A Town in* Meſopotamia, *anciently called* Antioch, *one ſide of* Euphrates. Edeſſa, Macedoniæ urbs in Emathia Regione. Ortelii Theſaur. Geogra.

Seldeni Mar. Clauſ, ſeu de Domin. Maris, & Boroughs *Soveraign. of the Seas.*

cord [d] extracted out of the Laws of *Hoelus Dha, Regis ſeu Principis Walliæ, circ. An.* 928. which for the proof of the ſaid *Dominium quaſi uno intuitu*, is here inſerted *in hæc verba*, viz.

'*Variato aliquantulum Nominis Vocabulo,* '*dici hic videtur* Huwell Da, *qui ſuperius* 'Hoel Dha, *Latine* Hœlus & Hœlus, *alias* '*Howal*, (*quem* Malmesburienſis *unum fu-* '*iſſe refert e quinque* Wallenſium *Regibus*) '*Quos cum* Cunadio *Rege* Scotorum, Mal-'colmo *Rege* Cambrorum, & Maccuſio '*Achipirata* (*ſeu Principe Nautarum vel* '*Marium Prafecto*) *ad Civitatem Legio-*'*num ſibi occurrentes, Rex* Anglorum Had-'garus *in Triumphi pompam deducebat. Una* '*enim impoſitos, remigrare eos hanc coegit,* '*dum in Prora ipſe Sedens, Navis tenuit* '*gubernaculum: ut ſe hoc ſpectaculo,* Soli '& Sali *orbis* Brittanici *Dominum prædica-*'*ret & Monarcham.*

In this Ancient and Memorable Record King *Edgar*, Neptune-like rides in Triumph over the *Britiſh* Seas, giving the world to underſtand, that *Dominium Maris* is the *Motto* of his *Trident*. Conſonant whereunto is that which the Law it ſelf ſays [e] *Mare dicitur eſſe de diſtrictu illius Civitatis vel Loci, qui confinat cum mari, in quantum ſe extendit territorium terræ prope mare*. In a word, to this purpoſe the Renowned Learned Mr. *Selden*, who hath left no more to ſay, but with *Jo: Baptiſt Larrea* in one of his Deciſions of *Granada*, That *Anthe-*

d] Spelm. Conſil. p. 414. Leges Eccleſiaſticæ *Hoeli Dha* (id eſt, Boni) Regis ſeu Principis totius Walliæ, è Secularibus ſuis Mss. decerptæ, circ. an. 928. Malmesb. de Regib. l. 2. c. 8. Marthuſius Archiparata (id eſt, Princeps Nautarum) ita Spelm. Gloſſ. Rex Angliæ Soli & Sali Orbis Brittanici Dominus.

e] Bald. Conſil. 51. & Tuſch. Concl. 87. verb. mare,

Authorum sententias non ex numero, sed ex ratione metiri oportet; & pensitari debent juris fundamenta, non Authorum Elenchum velut calculatione computari [f]

The Lord High Admiral is by the Prince concredited with the management of all Marine Affairs, as well in respect of *Jurisdiction* as *Protection*. He is that high Officer or Magistrate to whom is committed the Government of the Kings Navy, with power of Decision in all Causes Maritime as well Civil as Criminal; So that beside the power of Jurisdiction in Criminals, he may judge of Contracts between party and party touching things done upon or *beyond* the the Seas. [g] Wherein he may cause his Arrests, Monitions, and other Decrees of Court to be served upon the Land, as also may take the parties body or goods in execution upon the Land. [h] The Lord *Coke* in honour of the Admiralty of *England*, is pleased to publish to the world, that the Lord Admirals Jurisdiction is very Ancient, and long before the Reign of *Ed.* 3. and that there hath ever been an Admiral time out of mind, as appears not only by the Laws of *Oleron*, but also by many other Ancient Records in the Reigns of *Hen.* 3. *Ed.* 1. & *Ed.* 2. [i] Thus as the Laws and Constitutions of the Sea are nigh as Ancient as Navigation it self, so the Jurisdiction thereof hath universally been owned and received by all Nations; yea, and this Kingdome is by way of Emi-

nency

f] Larrea Decis. Granat. Disp. 4. nu. 32. & Leg. unic. sect. sed neque. cod. de vet. jur. enucleando.

g] *Tearms of Law*, verb. *Admiral*.

h] Ibid.

i] Coke part. 1. Instit. l. 1. c. 1. Sect. 3. & lib. 3. cap. 7. Sect. 439.

rency Crowned by Antiquity for the promulgation of the one, and establishment of the other. For, otherwise without such Maritime Laws, and such an *Admiral* Jurisdiction, how could the Ancient *Britains*, long before *Julius Cæsar* invaded this Isle, restraine all Strangers (Merchants excepted) from approaching their Confines, [k] or regulate such Navies as were the wonder of that Age? [l] Or, how could King *Edgar* in the Titles of his Charters have effectually styled himself as well *Imperator Dominusque rerum omnium Insularum Oceani qui Britanniam circumjacent*, as *Anglorum Basileus*, [m] or maintain in Naval Discipline those four hundred Sail of Ships appointed by him to guard and scour the *British* Seas? [n] And did not *Ethelbred* after *Edgar* for the self-same end and purpose set forth to Sea from *Sandwich* one of the greatest Navies that ever this Kingdome prepared? Doubtless this was no Lawless Navy, without Maritime Constitutions for the due regulation thereof according to the Laws of the Sea, Consonant to that of the Jurisdiction of the Admiralty then in use and received by all the Maritime Principalities of *Europe*.

k] Cæs. Com. de Bel. Gall. l. 4. fo. 72.
l] Ibid. l. 3. fo. 53.
m] Ex Charta fundationis Eccesiæ Cathed. Wigor. cit. per *Sir* Tho. Boroughs *in his Soveraignty of the British Seas*, pa. 21.
n] Ranulphus Cestrensis.

Whereas it is universally acknowledged, That the Admiralty of *England* is very Ancient, and long before the Reign of *Edward* the third, who ever consults Antiquity shall find it farre more Ancient, and long before the Reign of *Edward* the first; even

In Temp. H. 3. Rich. de Lucy *had* maritimam Angliæ, & Tho. Moleton *was* Capit. & Custos Maris. Spelm. Glos.

even time out of mind before the said *Edward* the first. To this purpose very remarkable is that ancient Record in the Tower of *London*, entituled, *De Superioritate Maris Angliæ & jure Officii Admirallatus in eodem*, and out of the old *French* rendred into *English* by Sir *John Boroughs* in his compendious Treatise of the *Sovraignty of the British Seas*, pag. 25, &c. edit. *Anno* 1633. in which it evidently appears that the Admiralty of *England*, and the Jurisdiction thereof was farre more Ancient then *Edward* the first, and that from age to age successively, and time out of mind even before the days of the said *Edward* the first, it was so owned and acknowledged by this and all other Neighbour-Nations, as appears by the said Record, which was occasioned by a National Agreement of certain differences arising between the Kings of *England* and *France* in the 26 year of the Reign of the said *Edward* the first, by reason of certain usurpations attempted by *Reyner Grimbald*, then Admiral of the *French* Navy in the *British* Seas; in which Agreement the Commissioners or Agents for the Maritime Coasts of the greatest part of the Christian world, of *Genoa*, *Spain*, *Germany*, *Holland*, *Zealand*, *Freezland*, *Denmark*, and *Norway*, then present, made this memorable Acknowledgment and Declaration, which is extracted out of the said Record, as to so much thereof as relates to the Jurisdiction of the Admiralty,

Record in the Tower of London.

miralty, *viz. That the Procurators of the Admiral of the Sea of* England, *and of other places as of the Sea-Coaſts, as of* Genoa, Catalonia, Spain, Almayne, Zealand, Holland, Freezland, Denmark *and* Norway, *do ſhew that the Kings of* England *time out of mind have been in peaceable poſſeſſion of the Seas of* England, *in making and eſtabliſhing Laws and Statutes and Reſtraints of Arms and of Ships, &c. and in taking Surety, &c. and in ordering of all other things neceſſary for the maintaining of Peace, Right and Equity, &c. and in doing Juſtice, Right and Law, according to the ſaid Laws, Ordinances and Reſtraints, and in all other things which may appertain to the Exerciſe of Soveraign Dominion in the places aforeſaid. And* A. de B. *Admiral of the Sea deputed by the King of* England, *and all other Admirals ordained by the ſaid King of* England *have been in peaceable poſſeſſion of the Soveraign guard, with the Cognizance of Juſtice, &c. And whereas the Maſters of the Ships of the ſaid Kingdome of* England *in the abſence of the ſaid Admiral have been in peaceable poſſeſſion of taking Cognizance and judging all actions done in the ſaid Sea, &c. the ſaid Procurators in the names of their ſaid Lords, do pray, &c. that ſpeedy delivery of the Goods and Merchandizes taken and detained, be made to the Admiral of the ſaid King of* England, *to whom the Cognizance of the ſame of right appertaineth, ſo that without*

diſturbance

disturbance of you or any other he may take Cognizance thereof, and do that which appertaineth to his Office. In which Record it is observable, that even in those days, that is, before the time of *Edward* the first, the Kingdome of *England* had not only the Soveraignty of the *British* Seas, but also an Admiral empowered with a Jurisdiction Maritime to take Cognizance and judge all actions done on the Sea; to doe Justice, execute the Laws of the Sea, maintain Peace, Right and Equity, according to the Laws and Ordinances of the Sea; and in a word, to minister Justice in all things that to the Office of an Admiral appertain. To this might be added King *John's* Ordinance made at *Hastings*, touching the Soveraignty of the *British* Seas in the point of striking Sail or veiling Bonnets by the vessels of *Forraign* Nations to the Kings Ships; which Ordinance was made long before the Reign of *Edward* the first, and wherein mention is likewise made of the high Admiral of *England*; But this that hath been said, may abundantly suffice both to prove and illustrate the Antiquity of the high Admirall of *England*, and his Jurisdiction in matters Maritime.

If it be granted, that *Frustra sunt Arma foris, nisi est Consilium domi*, it cannot well be denied but that *Frustra sunt Arma domi nisi est Dominium Maris*, to which as undeniably may be added, that *Frustra est Dominium Maris, nisi est Jurisdictio domi*.

If

If therefore the Ancient Rights of the Jurisdiction of the Admiralty of *England*, should at any time happen to be impeded by ought, not so properly qualified Judicially to conserve the Rights of the *Soveraignty* of the *British Seas*, might not a Decay of Trade, that *Cornucopæ* of all National Provisions, be justly suspected? specially if Neighbour-Nations should thence pretend to spy any thing like a flaw in *Englands Trident*, as if her *Dominium Maris* were in part dismantled; the *Plenty* as well as the *Safety* and *Security* of these Kingdomes, much (under God) consisting in the Power of the Royal Navy, those *Pyramids* of *Majesty*, or *Floating Garisons*. The *Dominium & Jurisdictio Maris* are such Confederates, you cannot prejudice the one, and not the other; And therefore to scruple that Jurisdiction, those Ancient Rights, whereby our own are conserved and secured, may not be convenient; So that to doubt whether the established Jurisdiction of the high Admiralty of *England* may judge of Marine Properties, is implicitely and in effect to inferre, that the Navy Royall is equipped only to enamel the Seas and take the Air, or that their Captures at Sea must evaporate; if Bargains and Sales made *super altum mare* can transferre and alienate properties, then doubtless the Admiralty can finally judge and determine thereof. Nor let any man think the Admiralty of *England* is without remedy, in case

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Jurisdictionem cujusvis Judicis impediens ab eo puniri potest, & coerceri, licet ejus subditi non sint.

Bart. & Alex. in L. Omnibus, Sect. is videtur. D. Si quis jus dic. non obtemp. & Larrea. Decis. Gran. Disput. 1. nu. 13.

one man impleads another for an *Admiral* cause in another Jurisdiction; for if the Admiralty cannot summon and proceed according to the ancient style, practice and known Rights, Laws and Customes of that Jurisdiction, against such who in matters of Admiral Cognnizance prosecute the Law elsewhere, then what is it more then a meer *Idea* that hath no real existence beyond the pleasure of the parties litigant; nor is that other mis-opinion, *viz.* (That the Admiralty may not enforce its own Decrees and Orders) worth Consideration; for the Executive part is so inherent in a Jurisdiction, *quatenus* such, that in effect it is but a lame and imperfect Jurisdiction without a Power Coercive, which breaths life and vigour into a Jurisdiction by Execution, which otherwise would be but like a Body without a Soul, or like an expert Commander Commissioned to fight with his hands manacled behind him; *Sententia absque Executione, est quasi splendidum Justitiæ Cadaver.* This mis-conceit may not be much inferiour to theirs who are dextrous at Translocations by surmises and suggestions; if the the circumstance of Locality be too light to be traversable, yet it

Jurisdictione concessa, censetur concessum Imperium mistum, h. e. potestas Exequendi. Quoniam ea concessa, censentur etiam tradita ea sine quibus Exerceri non potest.

Carbo de Legib. lib. 11. Disp. 10. pag. 503. Lit. c.

where the Place is the Foundation, it is more then a bare Circumstance.

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is of weight enough to be ſurmiſed or ſuggeſted. It is not impoſſible but that the Cognizance of the Admiralty, being in part eſſentiated by the Marine Circumſtance of *Place*, may be obſtructed by a meer miſſurmiſe as to the Locality. *Summ cuiq; tribuere* is the ultimate Reſult or *Summa Totalis* of all Juſtice, whoſe Ballance is then beſt poized, when it weighs each Individuals, Policy with a Conſiſtency to common Intereſt. It may be not leſs hazardous then chargeable for the Client to complement *Juſtinian* with one Fee, and *Littleton* with another; If ſo, it will be expedient that he provide two Purſes, which is but the beginning of ſorrows, for he muſt alſo provide a good ſtock of Patience to await the event of what will put no iſſue to the merits of his Cauſe. And in Concurrencies of Juriſdictions a Concurrency of Juriſdictional qualifications as well *Intrinſick* as *Extrinſick* ſeems to be requiſite; for, admitmitting that by a *Dedimus poteſtatem*, or other Writ of like nature, witneſſes might be Legally examined at *Venice*, *Lisbon*, or other tranſmarine parts; *Sub mutua viciſſitudinis obtentu*, yet what Judicial improvement can be made thereof, eſpecially *quando ex facto jus oritur*, without due *intrinſick* qualifications calculated for the *Meridian* of a Maritime Cauſe. But to digreſs, may be to tranſgreſs; To return therefore to the Antiquity of the Office and Juriſdiction Admiral.

It may not be hence imagined but that it is as legal at Common Law to ſurmiſe in a Declaration an act poſſibly done at Sea to be indeed done at Land: As at the Admiralty, to alledge in a libel an act poſſibly done at Land, to be indeed done at Sea, vel infra Juriſdictionem maritimam.

A *Concurrency of Juriſdiction ſeems to imbly a Diviſibility thereof.* But Juriſdictio eſt quid Incorporale, nec diviſionem recipit nec patitur. Dur. Spec. l. 4. de præſcript. nu. 22.

The Authour of the Book entituled, *Rights of the Kingdome*, hath ſeveral Paſſages concerning the Office and Juriſdiction of the Admiralty, whereof one is *(pag.90.)* That *Edgar* that Great Monarch, was as great a Conquerour by Sea, as *Æthelſtane* by Land; That it might be eaſier to ſhew his four Seas, then to ſet their exact Bounds. But in *(pag.132.)* he is pleas'd to ſay, that the Law Maritime is *Dark* enough, with all the Juriſdiction of the Court Admiral; (So is the Sun to him that *will* not ſee) where he farther ſeems to pleaſe himſelf with ſaying, That that Office may be harder then the Name, by calling it a ſtrange mixture of *Greek* and *Arabick*. Yet for the Antiquity of the ſaid Office, he doth the Admiralty that right, as withal in the ſame place to aſſert, That the old Ms. *del' Office del' Admiral* hath divers Records of *H.* 1. *Rich.* 1. and King *John*, ſpeaking of Trials by twelve (as at Common Law) But that now the practice is much otherwiſe. And that in the Rolls of *Ed.* 1. the Name of Admiral: But not in our Printed Laws *(that the ſaid Authour knows of)* till *Edward* the ſecond. And then adds, That in *Edward* the third the Rolls are full of that Office. And ſo proceeds, That in *Rich.* 2. it was brought to a Weldy *(that's the Epethite it pleaſes him to afford it)* Model. Being *Uncertain* rather then *Infinite* before, *as the ſaid Authour* is there pleaſed to determine; For (ſays he) the Bounds were ever

ever straighter much, then some may imagine. Also that they were again disputed in *Henry* the fourth, Q. *Elizabeth*, and King *James*. And then he is pleas'd most facetiously to add, That it lies more open to the *Common Law*, then to the *Wind*. Yet withal he doth not there conceal, but that besides the Laws of *Arthur* the *Britain*, and *Edgar* the *Saxon*, we have some Records of Custome by *Sea* as well as by Land; with Priviledge to some, below the King, before the *Norman*: whom they make the *Founder*, yet he was (in the said Authours judgement) but *Patron* of the *Ports*, and *Wardens* of the Sea. And the same Authour, speaking of the Sea-statutes of *Rich.* 1. how that they were made, *de Communi probarum virorum Consilio*, refers to the very expression of the Charter it self; in *Hovenden*, *Wendover*, or *Matthew Paris*, who doth add, that *per Consilium Magnatum*, there were made *Justiciarii super totum Navigium Anglia*, &c. which with divers Records of *Henry* the third may be added to the *Admiral*: or *Saxon Aen Mere eal*, *Over all the Sea*. To which much might be added from the Rolls of *Hen.* 3. and *Ed.* 1. But this that hath been said, may suffice to satisfie some and convince others, touching the Antiquity of the Office and Jurisdiction of the High Admiralty of *England*.

For the *Utility* of this Ancient Jurisdiction of the Admiralty in this Kingdome of

Great *Britain*, if you have retrospect to the Honour thereof in Precedent Generations, Antiquity can witness with what effectual success (if not to the *nonplus* of Neighbour-Nations) the *Dominium Maris Brittanici* hath been from Age to Age Judicially asserted; If you consider the plenty and splendour of a flourishing Kingdome, the present Generation cannot yet forget to give ample testimony thereof in reference to the Trade and Commerce of this Nation; And if you will not be so irregular as to deny the Consequence that naturally flowes from these Premises, you cannot but inferre this Positive Conclusion, That the succeeding Generations are like to suffer as well an Eclipse of their Honour, as an Abatement of interest, without the influence of that Jurisdiction; Insomuch as the late Cardinal (save one) of *France* did wisely (according to the last cited Authour) dispose, or rather retain that Office, as the best Jewel of that Kingdome, which yet must yield to this. But in a word, the Jurisdiction of the Admiralty of *England* may not unaptly be compared to that Tree in the Island of *Fierro*, being one of the *Sept. insula* of the *Canaries*, which as *Historians* tell us, doth with the droppings of his leaves yield water for the sustenance of the whole Island; It is farther added, that the *Moors* having taken that Island from the *Christians*, attempted to fell down that Tree, but each blow recoyled on the striker.

Car. Richlieu.

Purch.

ker. The former part of this ſtrange Relation with a ſmall variation paſſes for a Truth, as known unto and acknowledged by moſt of the Ancient Travellers and *Geographers*; The other part being probably but a fabulous Addition, *To keep hands off*, has not (as the other) the Credit of an Application. To conclude, if this Chapter ſeems to a *Genius* more ratified by acuteneſs for Apprehenſion, then endued with Patience for Expectation, more prolix then may be regularly conſiſtent with a Treatiſe only by way of Summary view, let him only conſider, that where Eagle-eyes, who are ſeldome dazeled with too much light, are to be dealt with, it may be leſs diſ-ingenious to borrow a Point of Expatiation, then to remain too much in debt to the Truth for want of room to diſplay her Beams in.

CHAP. IV.

Of Perſons *Maritime*; *As alſo, of ſuch* Things *as are properly Cognizable within the Juriſdiction of the Admiralty of* England; *And in what method it proceeds to Judgement.*

THere are but three things that ſeem ſpecially to illuſtrate the ſplendour of a Juriſdiction, *viz. Sceptrum Majeſtatis*, or

the Power and Legal Authority of the Prince, as to the Conſtitution thereof; *Codex Adminiſtrationis*, or the Right Adminiſtration of Juſtice; and *Gladii poteſtas, vel Gladius Executionis*, or the Coercive power. [a] That Juriſdictions thus conſtituted are *inter Regalia Principum*, no perſon not diſ-principled will deny; So as what was long ſince the Law as to the *Emperour* in point of Juriſdiction within the Empire, *Imperator quoad Jurisdictionalia Dominus totius mundi appellatur*, [b] is the ſame and as true in abſolute Kings and Princes within their own Kingdomes, Dominions, Principalities and Territories; And no wonder, in that Kings and Princes *tantum poſſunt in ſuo ſtatu, quantum Imperator in Imperio.* [c] Some without liſping ſay, that a King in his Kingdome hath a farre greater right and intereſt, then the Emperour hath in the Empire; for that a King is *Loco Domini*, and his Kingdome is more aſſimilated unto & hath a greater reſemblance with that which is *Dominiũ*, properly ſo called, then with that which is but ſimply *Regimen.* [d] The Emperour is not *Proprietarius*, but chief Governour of the Empire; [e] And that only by Election, not by Succeſſion as the other. [f] Now as the Seas belong to Princes in reſpect of Juriſdiction and Protection; [g] So alſo in them properly reſides the Right and Power of Commiſſionating Miniſters of Juſtice for the due Exerciſe and Adminiſtration thereof, in deciſion of all matters, whether

[a] Peregrin. de jur. Fiſc. lib. 1. tit. 1. nu. 10.

[b] L. Deprecatio, Dig. ad Leg. Rhod. de Jact.

[c] Bart. in L. 1. Par. de qua re. D. de Poſtul. & in L. infamem. D. de Public. Judic.

[d] Bald. Conſil 271. num. 3

[e] Ibid. Conſil. 327. nu. 7.

[f] Andr. Iſer. & Afflict. in cap. 1. de Vaſſal. decrept. ætat.

[g] Jaſon Jac. de Are. & Bald. in l. 2. ff. de Rer. Deviſ.

whether Civil or Criminal within their Cognizance according to the known Laws of the Sea, not contradicting the Statute or Municipal Laws of that Kingdome or State, whereof the ſaid Prince is next and immediately under God Supreme. [*b*]

As to *Perſons* Maritime, it might be conſidered who they are that more peculiarly are of Marine capacities, and properly may be ſaid to be within the Juriſdiction of the Admiralty; what their Rights, Priviledges and Immunities are; and what their Office or Duty reſpectively is; Likewiſe as to *Things* properly Maritime, it might be conſidered either as they be in reſpect of the actions thence ariſing, *Civile*, and reſpecting only *Commodum Privatum*, between party and party, whether it be *Contractus* or *quaſi Contractus*, either by any Perpetual known Rights, or by ſome Caſual Occurrence; Or *Criminal*, and reſpecting the *Fiſcus* in reference *ad utilitatem Publicam*; but that the deſign of this Treatiſe is not to expatiate in the Law on any of theſe, but only (as moſt adequate to a Summary view of the Admiral Juriſdiction) to touch *quaſi in tranſitu* what referres to each of theſe under its own proper head, and no farther then may be of uſe for the clearer diſcovery of the ſubject matter of the Juriſdiction of the Admiralty of *England*; without engaging into Controverſal points; chuſing rather in a Treatiſe ſo compendious to be wind-bound

b] Gloſ. in verb. Criminalibus, in tit. de pace. Conſtan. Bald. in Auth. Caſſa. Cod. de Sacr. Sanct. Eccl. Alex. Conſ. 8. col. 1. Cagnol. in L. 2. de Orig. jur. nu. 190

in our own Ports, then to launch forth into the wide Ocean of the Maritime Laws touching this Subject, specially in an *English* Bottome, having an eye to the Burden of the Vessel, and for whose accompt this *Cargo* was first shipp'd, whither bound, and for whom consigned; as also how disadvantageous it might prove for the *Principals* to have the returns of their expectation only in the Arbitrary altercations of cross-opinions, rather then in such staple-truths of the Law as are not only currant in all the Navigable parts of the world, but of most use and practice in the Admiralty of *England*. For these reasons the Reader may expect only a taste of *Admirall* varieties, and therein no more then may serve to excite his impatience after the excellency of that which in a set Treatise for this purpose might in its proper Dialect and due Latitude be emitted by an abler Artist.

All Maritime affairs are regulated chiefly by the *Emperial* Laws, the *Rhodian* Laws, the Laws of *Oleron*, or by certain peculiar and Municipal Laws and Constitutions appropriated to certain Cities, Towns and Countries bordering on the Sea, within or without the *Mediterranean*, calculated for their proper Meridian; or by those Maritime Customes and Prescriptions or Perpetual Rights which are between Merchants and Mariners, each with other, or each among themselves. This Maritime Government

vernment and Jurisdiction is by the King as Supreme, as well by Sea as at Land, concredited with the Lord high Admiral of *England*, who next and immediately under the Prince hath the chief Command at Sea, and of Sea-affairs at Land. This Lord high Admiral hath several Officers under him, some of a higher, others of a lower form; Some at Land, others at Sea; some of a Military, others of a Civil Capacity; some Judicial, others Ministerial. Such as are Chief in the Judicial Capacity are in the Law known by the style of *Magisteriani*, or Judges of Sea-faring debates and all Maritime controversies; whereof one being the *Judex ad quem* in all Maritime causes of appeal from inferiour Courts of Admiralty, is with us known by the style of *Supremæ Curiæ Admirallitatis Angliæ Judex*; within whose cognizance in right of the Jurisdiction of the Admiralty by the Sea-Laws, the Laws and Customes of the Admiralty of *England*, are comprized all matters properly Maritime or any way pertaining to Navigation. The Judicial Proceedings wherein are Summary, *Velo Levato, & sine figura Judicii*, As by warrant of arrest or other Original Mandate; Execution and Return thereof; Interposition of Caution given by the arrested for his Legal Appearance according to the tenor of the said Warrant of Arrest; Appearance and Introduction of Sureties by way of Stipulation or Judicial Recognizance in

Li Consoli del mare.

in the ſumme of the Action, *de judicio ſiſti, de judicato & expenſis ſolvendis, cum ratihabitione Procuratorii*; as alſo the Plaintiffs caution to pay coſts in caſe he fail in his ſuit; Contempt in caſe of non-appearance, and forfeiture of the ſaid caution in caſe of ſuch contempt; offering the Libel in caſe of Appearance; *Litis* conteſtation or joyning of iſſue; Decree for the Defendants perſonal Anſwer upon Oath to the ſaid Libel exhibited againſt him; a Decree for a *viis & modis* in caſe of a *Non Inventus*; a Decree againſt the ſureties to produce the party Principal *in judicio*; Production of him accordingly; his anſwer upon Oath to the Libel; Production of Witneſſes; Compulſory againſt ſuch Witneſſes as will not appear without it; Commiſſion for examining of Witneſſes at home, or *ſub mutua viciſſitudinis obtentu* beyond Sea; The Oath of Calumny by both parties, if they pleaſe; Exception againſt the Witneſſes; The Supplementary Oath; Exhibition of Inſtruments; Publication of Witneſſes; Concluſion of the Cauſe; Sentence Definitive; Appeal made within fifteen days of the ſaid Sentence; Aſſignment *ad proſequendum*, Proſecution of the Appeal; Remiſſion of the Cauſe to the Judge *A Quo*; Decree for Execution, and Sentence executed accordingly. Beſide the other way of proceeding by arreſt of goods, or of goods in other mens hands, and ſo to a *Primum Decretum* (as to

Ten days by the Law.
Fifteen days by the Stat.

to the Poſſeſſion) upon four Defaults; and thence after one year) to a *Secundum Decretum* (as to the Propriety) in caſe of *Non-intervention* (upon laying down the coſts of the *Prim. Decret.*) in the interim. In the Proceedings there may be alſo *Reconvention*, alſo ſequeſtration of goods *lite pendente*; and ſentence *Interlocutory*, as well as Definitive; with many other particulars which may or may not happen according as the Court ſees cauſe and the merits of the Caſe require.

Within the Cognizance of this Juriſdiction are all affairs that peculiarly concern the Lord high Admiral, or any of his Officers *quatenus* ſuch; all matters immediately relating to the Navies of the Kingdome, the Veſſels of Trade, and the Owners thereof, as ſuch; all affairs relating to Mariners, whether Ship-Officers or common Mariners, their Rights and Priviledges reſpectively; their office and duty; their wages; their offences, whether by wilfulneſs, caſualty, ignorance, negligence, or inſufficiency, with their puniſhments. Alſo all affairs of Commanders at Sea, and their under-officers, with their reſpective duties, priviledges, immunities, offences, and puniſhments. In like manner all matters that concern Owners and Proprietors of ſhips, as ſuch; and all Maſters, Pilots, Steerſmen, Boteſwains, and other ſhip-Officers; all Ship-wrights, Fiſher-men, Ferry-men, and the like; Alſo all cauſes of Seizures and Captures,

Captures made at Sea whether *jure Belli Publici*, or *jure Belli Privati* by way of Reprizals, or *jure nullo* by way of Piracy; Also all Charter-parties, Cocquets, Bills of Lading, Sea-Commissions, Letters of safe Conduct, Factories, Invoyces, Skippers Rolls, Inventories, and other Ship-papers; Also all causes of Fraight, Mariners wages, Load-manage, Port-charges, Pilotage, Anchorage, and the like; Also all causes of Maritime Contracts *indeed*, or *as it were* Contracts, whether upon or beyond the Seas; all causes of mony lent to Sea or upon the Sea, called *Fœnus Nauticum*, *Pecunia trajectitia*, *usura maritima*, *Bomarymony*, the Gross Adventure, and the like; all causes of pawning, hypothecating, or pledging of the ship it self, or any part thereof, or her Lading, or other things at Sea; all causes of *Jactus*, or casting goods over board; and Contributions either for Redemption of Ship or Lading in case of seizure by Enemies or Pyrats, or in case of goods damnified, or disburdening of ships, or other chances, with Average; also all causes of spoil and depredations at Sea, Robberies and Pyracies; also all causes of Naval Consort-ships, whether in War or Peace; Ensurance, Mandates, Procurations, Payments, Acceptilations, Discharges, Loans or Oppignorations, Emptions, Venditions, Conventions, taking or letting to Fraight, Exchanges, Partnership, Factoridge, Passagemony, and whatever is of Maritime nature, either

either by way of *Navigation* upon the Sea, or of *Negotiation* at or beyond the Sea in the way of Marine Trade and Commerce; alſo the Nautical Right which Maritime perſons have in ſhips, their Apparel, Tackle, Furniture, Lading, and all things pertaining to Navigation; alſo all cauſes of Out-readers, or Out-riggers, Furniſhers, Hirers, Fraighters, Owners, Part-owners of ſhips, as ſuch; alſo all cauſes of Priviledged ſhips, or Veſſels in his Majeſties Service or his Letters of *ſafe Conduct*; alſo all cauſes of ſhipwrack at Sea, Flotſon, Jetſon, Lagon, Waiffs, Deodands, Treaſure-Trove, Fiſhes-Royal; with the Lord Admirals ſhares, and the Finders reſpectively; alſo all cauſes touching Maritime offences or miſdemeanours, ſuch as cutting the Bovy-Rope or Cable, removal of an Anchor whereby any Veſſel is moared, the breaking the Lord Admiral's Arreſts made either upon perſon, ſhip, or goods; Breaking Arreſts on ſhips for the King's Service, being puniſhable with Confiſcation by the Ordinance made at *Grimsby* in the the time of *Rich.* 1. Mariners abſenting themſelves from the Kings Service after their being preſt. Impleading upon a Maritime Contract or in a Maritime Cauſe elſewhere then in the Admiralty, contrary to the Ordinance made at *Haſtings* by *Ed.* 1. and contrary to the Laws and Cuſtomes of the Admiralty of *England*; Foreſtalling of Corn, Fiſh, &c. on ſhip-board, regrating,

grating, and exaction of water-officers; the appropriating the benefit of Salt-waters to private use exclusively to others without his Majesties Licence; Kiddles, Wears, Blind Dikes, Water-mills, and the like, to the obstruction of Navigation in great Rivers; False weights or measures on ship-board; Concealings of goods found about the dead within the Admiral Jurisdiction, or of Flotsons, Jetsons, Lagons, Waiffs, Deodands, *Fishes Royal*, or other things wherein the Kings Majesty or his Lord Admiral have interest; Excessive wages claimed by Ship-wrights, Mariners, &c. Maintainers, Abettors, Receivers, Concealers or Comforters of Pyrats; Transporting Prohibited goods without Licence; Draggers of Oysters and Muscles at unseasonable times, *viz.* between May-day, and Holy-rood-day; Destroyers of the brood or young Fry of Fish; such as claim Wreck to to the prejudice of the King or Lord Admiral; such as unduly claim priviledges in a Port; Disturbers of the Admiral Officers in execution of the Court-Decrees; Water-Bayliffs and Searchers not doing their duty; Corruption in any of the Admiral-Court-Officers; Importers of unwholesome Victuals to the peoples prejudice; Fraighters of strangers Vessels contrary to the Law; Transporters of prisoners or other prohibited persons not having Letters of safe Conduct from the King or his Lord Admiral; Casters of Ballasts into Ports

Whales, Sturgeons, Porpoises, Bailines, Dolphins, and all Fishes strange for bulk, rarity, or quality, are called Fishes Royal, *and belong to the King.*

Ports or Harbours, to the prejudice thereof; Unskilful Pilots, whereby ſhip or man periſh; Unlawful Nets, or other prohibited Engines for Fiſh; Diſobeying of Embargos, or going to Sea contrary to the Prince his command, or againſt the Law; Furniſhing the ſhips of Enemies, or the Enemy with ſhips; All prejudice done to the Banks of Navigable Rivers, or to Docks, Wharffs, Keys, or any thing whereby Shipping may be endangered, Navigation obſtructed, or Trade by Sea impeded; Alſo embezilments of ſhip-tackle or furniture; all ſubſtractions of Mariners wages; all defraudings of his Majeſties Cuſtomes or other Duties at Sea; alſo all prejudices done to or by paſſengers a ſhipboard; and all damages done by one ſhip or Veſſel to another; alſo to go to Sea in tempeſtuous weather, to ſail in devious places, or among Enemies, Pyrats, Rocks, or other dangerous places, being not neceſſitated thereto; all clandeſtine attempts by making privy Cork-holes in the Veſſel, or otherwiſe, with intent to deſtroy or endanger the ſhip; Alſo the ſhewing of falſe Lights by Night either on ſhore or in Fiſhing Veſſels, or the like, on purpoſe to intice Sailers, to the hazard of their Veſſels; all wilful or purpoſed entertaining of unskilful Maſters, Pilots or Mariners, or ſailing without a Pilot, or in Leaky and inſufficient Veſſels; alſo the over-burdening the ſhip above her birth-mark, and all

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ill Stowage of goods a ſhipboard; alſo all Importation of *Contrabanda* goods, or Exportation of goods to prohibited Ports, or the places not deſigned; together with very many other things relating either to the ſtate or condition of perſons Maritime, their rights, their duties, or their defaults; all which only to enumerate would require a Volume of it ſelf; Theſe therefore may ſuffice for a hint of perſons and things properly Cognizable within the Juriſdiction of the Admiralty of *England*; Omitting what might be here likewiſe added as to the Naval Military part within the Cognizance of the ſaid Juriſdiction; As that ſhips in the *Britiſh* Seas not amaining at the firſt Summons to any of his Majeſties ſhips, may be aſſaulted and taken as Enemies; That no Prize ought to be carried from the Fleet without the Admirals leave; That all above hatches, ſaving the ſhip-furniture, ought upon a ſeizure *jure belli* to goe to the Captors; That the Veſſels of Forraigners met with at Sea, may be viſited and examined, if ſuſpected, ſpecially in times of Warre, their Cocquets, Paſports, Charter-parties, Invoyces, Bills of Lading, Ship-Roll, with other Inſtruments & ſhip-papers peruſed, that ſo, if there be cauſe, they may be brought before the Admiral.

There are many other particulars, referring as well to the Civil as to the Criminal part of this Juriſdiction, which might be here inſerted; but the deſign of this Compendious

pendious Treatiſe being (as formerly hinted) rather to *touch* then *handle* things, it may not be expected that the great *Continent* of the *Admiralty* ſhould be compriſed in ſo ſmall a Map. To conclude therefore with that great Oracle of the Civil Law, *Baldus*, touching the Marine Juriſdiction. *In mari Juriſdictio eſt, ſicut in terra. Nam Mare in terra* (h. e.) *in alveo ſuo fundatum eſt, quum Terra ſit inferior Sphera: & videmus de jure Gentium, in mari eſſe Regna diſtincta ſicut in arida terra: Ergo & Jus Civile (id eſt) Præſcriptio illud idem poteſt (in mari ſcilicet quod in terra) operari.* So that all ſuch, as out of a ſubtile humour would fain inſinuate into the world, as if there were no ſuch thing as *Juriſdictio maris*, or *Dominium maris*, with its preſcript limits and bounds (ſome arguing from the perpetual motion of that liquid element; Others, from a ſuppoſed parity between the Sea and the Air in point of Community) are by this Learned Oracle left without any hopes or poſſibility of the leaſt Orthodox ſupport for their *Anti-thalas-monarchical* opinion; For in this place he is poſitive, That both the Juriſdiction and the Dominion of the Sea, with their diſtinct limits and bounds, as well as that of the Land, are duly conſtituted, and that not by force and power, but by Law, not only by the Civil, but alſo by the Law of Nations; and this not in the Emperours alone, but alſo in ſuch

Bald. ad Leg. 2 D. de Rer. Diviſ.

Kingdomes and States as by Preſcription, Cuſtome, or otherwiſe may claim the ſame.

CHAP. V.

Of Laws *and* Juriſdictions *in general; with the ſeveral kinds and degrees thereof.*

IT is recorded in the Hiſtorical part of the Law by that famous Lawyer of *Millayne*, *Jaſon Maynus*, (who flouriſhed about the year of our Lord 1500, and taught at *Padua*, where he dyed *Anno* 1519. [a]) upon this ſubject of Juriſdictions, that *Raphael Fulgoſius*, that *Jaſpis virtutum, utroque jure ſtupor*, as his Epitaph in S. *Anthonies* Church at *Padua* (where he alſo dyed above one hundred years before the other) ſtyles him, [b] when he was a young Student in the Laws, was wont to ſay that of other matters and points of Law he could attain to ſome underſtanding by his private ſtudy and chamber-diſquiſitions, but in this point of *Juriſdictions* he could underſtand nothing at all but what he heard in the Schools *Voce Magiſtra*. [c] Of ſuch difficulty is the ſubject matter of this Treatiſe, and yet with what confidence do ſome illiterate perſons, (like boyes at foot-ball) toſs

[a] Val. Forſt. Hiſt. Jur. Civil. l. 3. c. 40.

[b] Ibid. c. 32.

[c] Jaſon. in ff. de Juriſdict. Om. Jud. Rub. nu. 1.

toss and play with *Jurisdictions*, even almost to the trippiug up the heels of Magistracy it self. *Jurisdictions* are things of much tenderness as well as profoundness, and must be gently touch'd as well as deeply weigh'd; if persons in *Juridical* Authority be styled *Mortal Gods*, then *Jurisdictions* are in some sense things *Sacred*, and may not be approached unto but with *Civil* reverence; Nor is the acquisition of the profound knowledge of the Law touching *Jurisdictions* a pomeridian work for *sollicitous* students, much less obvious to *rural* capacities.

A right understanding what *Law* is, gives the cleareſt prospect to a discovery what *Jurisdictions* are; the *Civilians* do succinctly and fully define *Law*, *Lex est Sanctio Sancta, jubens honesta, prohibens contraria. Law* is a Decree not to be violated, commanding things honest, forbidding the contrary. *Plato* in his definition of *Law*, says *It is a Reasonable Rule, leading and directing men to their due end for a publick good, ordaining penalties for them that transgress, and reward for them that obey.* And *Cicero* defines it to be the highest *and chief reason graffed in nature, commanding those things which are to be done, and forbidding the contrary.* And of all Laws, those of the *Empire*, next to the *Jus Divinum*, seem to challenge the precedency in all Forraign Kingdomes and States; though in this as not in their proper sphere they display not their beams with that lustre, for want of that

De Legibus.

L. 1. De Legibus.

encouragement and employment they deserve; It is every mans duty to have the best and highest thoughts of the Laws of his own Country, yet to oppose them to the Ancient *Imperial* Laws, either as to the *Theory* thereof, with their numerous host of most Learned Interpreters, or as to the *Practick*, in the Pleadings of the highest Courts of the greatest part of the Christian world, in the many Judgements and Decisions of the several *Rotes* of *Italy* at *Rome*, at *Naples*, at *Florence*, at *Genoa*, at *Bononia*, at *Mantua*, at *Perusium*, and the rest; in the Judgements of the *Imperial* Chamber at *Spire*, which is the last result of the *German* Nation; in the Decisions of *Granado* and other places of *Spain*, and other Kingdomes; as in the Arrests of the several Courts of *Parliament* in *France*, as *Paris*, *Aix*, *Burdeaux*, *Grenoble*, and the rest; To oppose any *Municipal* Laws (save our own) to the Ancient *Imperial* Laws in the latitude aforesaid, *recitasse est refutasse*, the very recital thereof is confutation enough, saving the honour due to the Laws of our Native Country.

It will not be denyed but that the *Great Legislator* of Heaven and Earth is the *Fountain* of all Laws, that is, *Law* properly so called, had its Origination from *God* himself. This is an undoubted *Position* not only in *Christian* Religion, but such as the *Doctors* of the *Gentiles* and *Heathens* themselves will easily admit; for even among them such

Is. inz. Cler. C. de Sum. Trin.

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assumed the Legislative Authority, and took upon them to prescribe Laws, would at the enactment thereof invocate their *false Gods*, and endevour to father them on one or other of their heathenish Deities, as *Minos* who gave Laws to the *Cretians*, on *Jupiter*: *Numa*, who gave Laws to the *Romans*, on *Ægeria Nympha*: *Zoroaster*, who to the *Bactrians* and *Persians*, on *Horomasis*: *Trismegister*, who to the *Egyptians*, on *Mercurius*: *Charondas*, who to the *Thurians*, on *Saturn*: *Lycurgus*, who to the *Lacedemonians*, on *Apollo*: *Draco* and *Solon*, who to the *Athenians*, on *Minerva*; *Mahomet*, who to the *Arabians*, on the Angel *Gabriel*. Thus all agree in this, that *Law* hath the image and superscription of some supernatural Powers, and is more Ancient then *Adams* Fall, as is evident by necessary though sad consequences; for without Law there had been no Transgression. In immediate subordination to the Divine and Natural Law written in the tables of the heart, came the *Jus Gentium*, or the *Law* of *Nations*, when men first began to have mutual Commerce with each other, for thereby was introduced a kind of *Necessity* for all Nations to observe some certain *Rules* as *Law*, without which no Society of men in way of reciprocal negotiations could subsist; which *Law* doth indeed flow from the *Law* of *Nature*; insomuch that *Cicero* was of opinion, that in all matters and affairs of the world whatever was the Consent and Concurrent approbation

Cic. Phil. 11.
L. 1. ff. de Legib.
Cœl. Rhod. l. 18. c. 19.
Plat. in Min.
Rom. 2, 14, 15
Tusc. 1.

probation or allowance of all Nations, that was to be understood the *Law* of *Nature*; Next unto which is the *Jus humanum & civile*, being a distinct *Law* both from the *Law of Nature* and also from the *Jus Gentium*, and seems to be then born into the world, when men first of many Individuals began to compact themselves into one Society, and when they first began to incorporate themselves into Bodies Politick, which in the worlds infancy seems to be when *Cain* built the City *Enoch*; for *Civil* Laws seem to have their Origination then when Cities began first to be built, Magistrates to be constituted, and Ordinations of Government to be committed to writing, for indeed *Civil Law* properly so called, is no other then that which every City constituted and enacted for it self, and for its own peculiar government; which Law also hath its foundation laid in the *Law of Nature*, from whence as from a Fountain are derived divers lesser channels and rivulets according to the great variety of Places, Persons, Times and Transactions; And the *Civil Law* of the *Roman* Empire in common acceptation and mode of speech is now for the Antiquity, Excellency, Universality, and Authority thereof called *The Civil Law* by way of Eminency, the Name and Appellation of the *Civil Law* being now properly appropriated to the *Imperial* Law and Constitutions, as that Law which was the Law Currant in all the Dominions of the *Ro-*

n. 4. 17.

L. omnes pop. ff. de just. & jure.

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man Empire, and is at this day in moſt parts of the whole Chriſtian world. Beſide theſe Laws peculiar to a due adminiſtration of Juſtice in matters meerly ſecular, there was alſo at the worlds Infancy a kind of *Sacerdotal* Law or *Law* of the *Prieſthood*, when men congregated firſt began to adore the Great God in the way of a Publick worſhip; for in the firſt Conſtitution of Common-weals and Cities, it was neceſſary to eſtabliſh certain Laws peculiar to the *Prieſthood*; for it cannot be imagined, but that when men Gen. 4. firſt began to offer their firſt-fruits and to ſacrifice to God, there was then ſome Law in being for the worſhip of the *Deity*; nor ought it to be doubted but that in thoſe days there was a true *Church* of Beleevers, as alſo true *Sacrifices*, and (as ſome hold) true *Sacraments*; and therefore not to be conceived but that there was alſo ſome *Eccleſiaſtical* Law then in force, which afterward became much more clear under *Moſes* Law. And by way of additament to this, in tract of time was the *Canon* Law eſtabliſhed in every Chriſtian Common-wealth, which received not (as ſome ſuppoſe) it's Original at that time when the General and Univerſall Councils began to be firſt held, as under *Conſtantine*, but in the days of the *Apoſtles* themſelves, who gave divers Rules and made many *Canons* touching *Divine Worſhip*, and in order to the ſalvation of Souls. And thus *Laws* being introduced into the world, it could not be but there muſt be *Ju-*

risdictions also, without which the Law is but a dead Letter. For the clearer understanding whereof, know

That the word [*Jurisdictio*] without the Letter [*c*] etymologizeth it self. [*d*] For it is not so called from [*Juris*] and [*dictio*] as some would have it, but from [*Juris*] and [*ditio*]. And so *Jurisdictio* is *quasi juris potestas*. [*e*] But this pleaseth not *Calvin*, who in this matter following *Ferrand*, [*f*] would derive it from [*Juris & dictio*] and doth charge *Accursius* with an errour in Judgement for holding it to be derived from [*juris & ditio*] though he confesses that *Bartol* himself and many others do follow *Accursius* therein; whose opinion seems to have the best congruity with reason in the energy of Law, though *Ferrand*'s Opinion seems to out-weigh, if the comprized matter should be ballanced only by the letters of the word; but indeed of the two *Accursius* hath by farre the more numerous Retinue.

So that *Jurisdictio* taken in the large sense, as the *Genus generalissimum* or *Plenissima Jurisdictio*, is nothing else but *Potestas* [*g*] *de jure Publico introducta* [*h*] *cum necessitate juris dicendi* [*i*] *& aequitatis statuendae*. [*k*] The word [*Jurisdictio*] taken in this large sense, doth properly signifie that Office or Function which the lawful Magistrate doth hold and exercise by the ordinary right of his just power and authority. [*l*]

Of Jurisdictions taken in this large sense, there are three species or kinds in the Law; There

d] In Arb. Jurisd. lit. a.

e] Inst. jur. Civil. in Proem. Par. quorum.

f] Ferrand. l. 1. Explicat. in lib. 3. Jurisdict.

g] L. potestas. De verb. Sig.

h] L. 1. Par. hujus, ff. de Just.

i] L. munerum. Par. judicandi, ff. de Muneribus.

k] L. placuit. Cod. de Judiciis.

l] L. 1. ff. de Jurisd. & Jas. in Rub. & l. 19 nu. 10. ibid.

There is *Imperium Merum*, *Imperium Mixtum*, & *Jurisdictio simplex*. And it is called *Imperium*, because it proceeds from the Authority of the Judge, and not from any right inherent or residing in the party.

The first of these, *viz. Imperium Merum*, is that Jurisdiction, which respecting only the Publick utility is exercised *Officio Judicis Nobili*, and by way of *Accusation*. [m] This hath the power of the Sword *contra homines facinorosos*, and all Capital Offenders. [n] And is so called from its purity, simplicity and immixture with either of the other kinds of Jurisdictions. [o] Of this *Imperium Merum Bartol* makes *Six* several degrees [p] which *Jason* contracts into *Four*, but *Zasius* into *Three*.

Of these *Six* degrees of *Imperium Merum*, the *First* is *Merum Imperium Maximum*; And this resides only in the *Prince*, or in the Supreme Authority. [q] In this *Bartol* doth lodge the *Legislative Faculty* or power of enacting Laws; also the calling a *General Council*, or the summoning a *Parliament*; also the power of *Confiscation* of Delinquents goods. In a word, under this *Merum Imperium Maximum* are contained all things competible to *Princes* or the Supreme Magistrate. [r] And to these particulars which *Bartol* mentions under this head, the DD do add one more, and that is the creating of *Tabellions* General or *Publick Notaries*. [s]

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m] Bart. in Arb. Jurisd. lit. c.

n] Corvin. de Jurisd. & Fulgos. l. 3. de Jurisd. n. 1.

o] Bart. ubi supra.

p] Bart. ib.

q] L. 1. ff. de Const. Princip.

r] Cacialup. in L. Imperium, ff. de jurisd. om. Jud.

s] Jun. & alii in C. cum Pub. Tabellio, de fin. just. & Bald. in tit. de Jurisd. om. Jud.

The *Second* degree is *Merum Imperium Majus*. This extends to the taking away of life, and hath the power of the Sword. [t] Under this head also is that *Potestas gladii in homines facinerosos* forementioned; [u] but derivative from the Prince.

The *Third* degree is *Merum Imperium Magnum*, under which head is comprehended *Deportation* or perpetual banishment. [w] But these two last degrees *Jason* comprehends under one and the same head, [x] For says he, under the power of the Sword *in facinerosos homines* is comprehended *three* kinds of Capital Causes, *viz. First*, when the Life Natural is taken away either in whole or in part, as by dismembration, amputation, or mutilation. [y] *Secondly*, when the *Life Civil* is taken away, as by loss of *Liberty* and by *perpetual* imprisonment; for such are dead in Law. *Thirdly*, when a man is deprived of his Franchise, Freedome or Priviledges which he had in any place by a Natural or Civil Right. [z]

The *Fourth* degree is *Merum Imperium Parvum*, under which head is comprehended *Relegation* or temporal exilement; [a] which is no more then an extermination, whereby a man is commanded out of the confines of his own Country for a season. And although *Deportatio & Relegatio* be often used promiscuously in the Law for one and the same, yet the Law discriminates them by very different Characters; For in *Deportation* there is a perpetual, in *Relegation* but

2.
t] Bart. ubi supra, lit. e.
u] Bart. de Jurisd. nu. 8.

3.
w] Ibid. nu. 9.
x] Jas. in l. 3. ff. de Jurisd. nu. 22. in prin.
y] Cyn. in l. si quis non dicã. q. 19. C. de Episc. & Cler. & in L. Transigere, q. 4. C. de Transact.
z] Jas. ubi sup.

4.
a] Bart. & Jas. ibid. & l. nulli, C. de sent.

but a temporal banishment. And as they differ in the Circumstance of Time, so also in the Circumstances of Place: For in *Relegation* the party is only circumscribed, and it's part of his punishment that he shall not go out of the limits of such a certain place, so *Shimei* the *Benjamite* that cursed *David* in his way to *Mahanaim*, was after *David's* death confined by his son *Solomon* unto *Hierusalem*, and not to pass over the Brook *Kidron*; who upon occasion of his going afterwards to *Gath*, exceeded the limits of his circumscription, and for so doing was put to death by *Benaiah* at the Kings command. But now in *Deportation* the party is not so confined to or circumscribed by any certain place, but is quite banished and exiled out of all the precincts of his own Country. Again, in *Deportation* the party cannot take his goods with him, in *Relegation* he may; but this difference holds not always. Likewise under this head is comprized every Corporal punishment, [b] provided it be *Tortura ad pœnam Delicti*: For if it be *Tortura* only *ad investigationem veritatis*, then it may be otherwise.

1 King. c. 2. v. 8, 36, &c.

[b] L. Si quid erit, ff. de Offic. Proconf.

The *Fifth* degree is *Merum Imperium Minus*, under which is comprized that moderate Coertion by Corporal Castigations which are *ad vindictam Malefici*, to distinguish it from *Coertio verbalis per officium Merum*, and is competible with the Office or Function of Magistrates in Authority. [c] Also Cognizance of such crimes as are of the lesser

5.

[c] Bart. ibid. & Magistratib. ff. de Jurisd.

lesser and inferiour kind. [d] Of this and the last precedent degree or member of *Imperium Merum*, *Jason* makes but one, as formerly but one of the Second and Third degrees; So that although here be Six species, degrees, or members of *Imperium Merum*, according to *Bartolt* accompt, yet here are but Four according to *Jasons* computation, and to him in this matter the DD. do generally incline rather then unto *Bartoll*.

[d] Bart. ibid.

The *Sixth* and last degree is *Merum Imperium Minimum*, which comprehends whatever is imposed by way of pecuniary mulct upon some crime, [e] provided such pecuniary mulct be in reference to the Publick utility, and not in satisfaction of private injuries.

[e] L. fin. C. de modo Mulct. & l. 1. ff. 6 quis jus dicen. 6. obtemp. & l. 2. C. de Sportul.

Imperium Mixtum.

The *Second Species* or kind of *Jurisdictio*, taken in this large sense, is *Imperium Mixtum*; And it is that Jurisdiction which respecting only private utility is exercised *Officio Judicis Nobili*, [f] It is so called, as being of a mixt nature, because it consists partly of *Imperium Merum*, and partly of *Jurisdictio Simplex*; And as it consists *in Commodo pecuniario*, respecting only private utility, so it doth participate of *Jurisdictio Simplex*, and is differenced from *Imperium Merum*.

[f] Bart. ibid. num. 9.

Of this *Imperium Mixtum*, *Bartol* in the former makes other six degrees, which *Jason* contracts to three, and calls them *Gradum Maximum*, *Medium*, & *Minimum*.

[f] In l. Imperium, no. 87. ff. de Jurisd. om. Jud.

The

The *First* and *Second* of *Bartols* degrees *Jason* doth join in one, as being both competible only to the *Prince* or Supreme Magistrate. The *Third* and *Fourth* of *Bartols* degrees he likewise joyns in one, as both requiring *plenam causæ cognitionem*, and both incompetible with interiour Magistrates. So likewise of the *Fifth* and *Sixth* degrees. Now because this last Division of *Jasons* seems to take best with the most part of the DD, as being the most succinct yet comprehensive of all, *Jasons* method shall here be followed, as formerly was *Bartols*.

The first degree then of *Imperium Mixtum* according to *Jasons* account is *Imperium Mixtum Maximum*, which pertains solely to the *Prince*, and concerns only *Actus voluntarios*; [*h*] yet it may be also in the ordinary Magistrate, but then it must be by way of derivation from the *Prince*. [*i*] This *Imperium Mixtum Maximum* comprehends *veniam ætatis impetranti*, [*k*] That is, that whereas by the Civil Law a man is held a *Minor* and under age until he attain unto the age of twenty five years, the Prince might at his Petition grant *veniam ætatis impetranti*, that is, if such *Minor* being a Male could prove himself to be of the full age of twenty years, or being a Female could prove her self to be of the full age of eighteen years, then might such by way of Petition *impetrare veniam ætatis à Principe*, that is, they might for the better management of their estate request the Prince's favour for an

h] L. 2. C. de his qui veniam ætatis impet.

i] L. 8. ff. de Jurisd.

k] Bart. ibid. nu. 17.

an exemption from their Minority, and to be held and taken as of full age, that is, as of the age of twenty five years, to all intents and purposes of Law whatever; only they could not by vertue of such Priviledge alienate their Prædials or Immoveables without a special Decree for that purpose; And this Priviledge was obtainable only by the Prince's Grant. [l] Also under this head is comprehended that which the *Civilians* call *Arrogatio*, which is a kind of *Adoption*, but something different from it; [m] For the Prince did *interponere Authoritatem Arrogationi*, [n] Likewise under this head is comprehended *Legitimation*, or the power of legitimating such as are unlawfully begotten; [o] And also *Emancipation*, which, properly so called, is a Judicial and solemn transference, alienation, or vendition of free-born children (For *Manumission* relates only to Servants and Bond-men) from and out of the *Dominium*, power, and Jurisdiction of their natural Parents into the power and right of another, had and done by the authority of the competent Judge with the concurrency and mutual consent of both parent and child. By such *Emancipation* the *Patria Potestas* is dissolved, *si filium sum fori familiaverit*; for it is a kind of vendition or sale by a tradition or delivery of his child out of his own right over to another, who thereby becomes as it were *Pater Fiduciarius*, or a Father in trust to the child; although anciently such *Emancipation* was held

[l] L. 2. C. de his qui ven. ætat. impet.

[m] Gaius in l. 2. tit. de Adop.

[n] Ibid.

[o] Auth. quibus mod. Nat. effic. legit. Par. illud.

held no leſs then Civil death to the child, or then an *Ingreſſus Religionis*. [p] Likewiſe under this head is comprehended that which the Law calls *Supplicatio*, which is a Cognition or Retractation of a Judicial ſentence, from which lies no Appeal, by way of Supplication, pertaining only to the *Prince*, and in the *Roman* Government to the *Prætorian Præfect*. [q] This is that Remedy of a Judicial Sentence which the *Canoniſts* call *Reviſionem Sententiæ*, or the Review of a Sentence. [r] This is uſed but very rarely and only in extraordinary Caſes, but chiefly againſt the Sentence of ſuch Judges as from whom by reaſon of their Eminency *non licet Appellare*. [s] In ſuch Caſes the imploring of the grace and favour of the Prince or Supreme Authority is properly called *Supplicatio*.

The *Second* degree is *Imperium Mixtum Medium*, under which is comprized a full and plenary Cognition of a Cauſe, with Coertion as well Real as Perſonal; of ſuch is the putting a man into poſſeſſion by vertue of a *Secundum Decretum*; Likewiſe *Reſtitutio in integrum*; Alſo the expulſion or outing another of his Actual Poſſeſſion; [t] In like manner under this head are comprehended all matters that require a *plenary Cognition*, although it hath not *Real* or *Perſonal Coertion*; As to give ſuch a *poſſeſſion* of goods as ſhall convey and carry a right of *Property* with it; Alſo to pronounce for the putting into *Poſſeſſion Ex Secundo Decreto*;

p] Flet. lib. 1. cap. 7. Par. 1. dem emancipat. & Cowel. Inſtit. jur. Angl. l. 2. c. 12. Par. 2.

q] L. 1. C. de ſen. Præf. & Auth. Quæ ſupplicatio. C. de Præcib. imper. Off. & Barr. ubi ſup. nu. 18. & in Arb. Juriſd. lit. m.

r] C. ex Literis. De Integ. Reſtitut.

s] L. 1. ff. de Offic. Præf. Prætor.

t] L. ea quæ Par. Magiſtratib. ff. ad Municipalem.

Decreto; Also to interpose ones Authority for the *Alienation* of things appertaining to *Minors*; Also in *Transactions* of *Alimony*, and the like. [v]

[v] Bert. Fulgos. & alii ubi supra.

The *Third* and last degree is *Imperium Mixtum Minimum*; And this consists in such things as are expedited *Officio Judicis Nobili*, but do not require a plenary Cognition as the former, but are determined by a Summary proceeding, and have respect only to *Private utility*. Of this kind is the putting into *Possession* by a *Primum Decretum*; Also any possession which to the Cognizance of the Cause doth not require a Proceeding *De Plano*, but only *Summarily & sine strepitu judicii*. [w] Of this kind also is the granting of *Possession* to *Minors Ex Edicto Carboniano*, so called from *Cneus Carbo* the *Prætor*, and Authour of that Edict. For when upon the death of a Parent Intestate any question or Controversie arose to the Pupil or *Minor*, either Male or Female by the *Masculine* line, concerning the inheritance or goods of such Parent; as also concerning the state, quality or condition of such *Minor*, or whether he were the legitimate Child of such Parent; In all such cases *datur Carboniana bonorum Possessio*, saith the Law; that is, such *Minor* shall by that *Edict* be put into possession of the said goods, he first giving good caution or security not to diminish the same during his *Minority*; and in the mean time the dispute in Law or Controversie touching the right of

[w] Fulgos. in L. Imperium. ff. de Jurisd. om. jud. nu. 40.

Title

Title to the ſaid goods, as alſo touching the ſtate, quality and condition of ſuch *Minor*, is by the ſame Edict to be deferred and put off untill he come of full age. [x] Likewiſe under this head falls *Manumiſſion*, [y] or the ſetting at liberty ſuch as were under the ſervitude and *dominium* of others, and refers properly to Servants that were under the domination of Maſters, as *Emancipation* doth to children free-born, that were under the power of their natural Parents; of theſe kinds are *Cauſa Libertinitatis*, & *Cauſa Ingenuitatis*. [z]

[x] Caſus in gloſ. in l. 1. ff. de Carbon. Edict.

[y] Bart. in L. Imperium. ff. de juriſd. om. jud. nu. 22.

[z] Salyc. & Rubr. l. 2. De Pedan. Judic.

The *Third* and laſt ſpecies or kind of *Juriſdictio* taken in this large ſenſe is *Juriſdictio Simplex*; And it is that Jurisdiction which is exerciſed *Officio Judicis Mercenario*; Reſpecting only *Private utility*, *Jure Actionis*. [a] And being thus exerciſed *Officio Judicis Mercenario*, it differs from both the former, *viz.* both from *Imperium Merum*, and from *Imperium Mixtum*. Of this *Juriſdictio Simplex*, which in truth is *Juriſdictio propriè ſtrictè & ſpecialiter ſumpta*, *Bartol* as in the former makes no leſs then *Six* Degrees; but *Jaſon* again as formerly reduces and contracts them to *Three*, viz. *Gradum Magnum*, *Medium*, *Minimum*. [b] Which method now follows, as being the acceptableſt with the Modern DD. and diſtinctly comprehenſive of all, that the *Six* Degrees which *Bartol* makes, are capable of.

Juriſdictio Simplex.

[a] Barr. ubi ſup. nu. 23. Jaſ. ubi ſup. nu. 31. Fulg. de Juriſd. om. jud. nu. 42.

[b] Jaſ. in L. Imperium, ff. de juriſd. om. jud.

Under the *Firſt* of theſe, viz. *Gradum*

Jurisdictionis Simplicis Magnum, are comprehended such as the Law looks on as matters of *great prejudice*; such are *Causæ Liberales*, wherein are controverted all disputes concerning *Liberty* or *Servitude*, *Freedome* or *Bondage*, *Ingenuity* (not of wit, but of *birth*) or *Libertinity*. [c] These *Causæ Liberales*, are understood in the Law as certain species opposite to such things as are either of *Merum* or *Mixtum Imperium*. [d] The Actions that hence do arise are as formerly *Actiones Liberales*, cognizable only before the Superiour Judges. [e] The truth is, such Actions as these that concern the state, quality, condition, or reputation of persons are in the Law termed *Causæ Arduæ*, & *Negotium Arduum*. [f] And therefore *Inferiour Judges* (who by interpretation of Law according to the *Civil Laws* account are *Judices Municipales* [g] are no way competent to take cognizance of such Cases. [h] Likewise under this head fall all Causes, wherein upon any Action any *Castigations*, *Coertions*, *Restraints*, or other *Corporal punishments* in execution of some *Definitive Sentence* do happen, [i] according to that smart Proverb in Law, *Qui non habet in ære, Luat in corpore*. [k] But to make it yet more clear; The Actions specially aimed at and properly intended hereby in the Law that fall under this head, are such Cases as in themselves and according to their nature are *Criminal*, but yet are *civilly* proceeded in or prosecuted,

Quando

c] Rub. in ff. de Lib. Caus. & l. 42. § 1. ff. Sol. Matrim. & l. 32. § liberali, ff. De Receptis, qui arb. receper.

d] L. placet. C. de Pt dan. Jud.

e] Rub. & glos. de Lib. Caus. & Fulg. in l. Imperium, ff. de Jurisd. nu. 44.

f] Defin. Jur. nu. 19. ff. de Jurisd. & C. ex ratione. De Appell. & Jason. sup. nu. 12.

g] Fulg. ubi sup.

h] Rub. & glos. min. ff. de Liber. Caus. & Bart. ubi sup. nu. 24.

i] Bart. Jas. & Fulg. ubi sup. nu. 43.

k] L. quicunq; C. de Ser. Fug. & l. Divus, ff. de Injuriis.

Quando ex causa delinquendi ex delicto, quis fiat Condemnandus Civiliter. [l] Or such Actions *Quæ Civiliter ex Maleficiis intentantur.* [m].

The *Second* Degree of *Jurisdictio Simplex* is *Gradus Medius*, under which are comprehended all such *Pecuniary* Causes as in value exceed *Trecenti Aurei*. [n] This *Aureus* among the *Ancients* was in value about our *English Noble*, or *Six Shillings and eight pence*; but in *Justinians* time it was something more, viz. about the value of an *Angel* in our *Gold Coin*. [o] Which is something less then *Centum Sestertii*, according to the *Roman* Account, which some would have the *Aureus Antiquus* to amount unto; [p] in every *Sestertius* must be in value three half pence farthing according to our Account. [q]

The *Third* and last Degree of *Jurisdictio Simplex* comprehends only such small and petty summes, as will not defray the charges of a *Plenary* and Judicial Order of Proceeding, and therefore they are heard and determined *Summarily & velo Levato*. [r] *Bartol* would state, liquidate and ascertain these petty summes to the value of *Centum Aureos* [s] Others to *Twenty*, others to *Ten Duckets*. [t] But *Jason* tells us plainly, that the truth and the more received opinion is, that in such cases the just and exact values are not determined or ascertained in the Law, but left *ad Arbitrium Judicis*, [u] according to that Rule in Law *in ff. de jur. delib.* [w]

l] Defin. Jurisd. nu. 19. ff. de Jurisd.

m] Fulg. ubi sup. nu. 42.

n] DD. ib.

o] Calvin. ver. Aureus.

p] Tacit. l. 7. de Othone.

q] Godw. Rom. Hist. li. 3. Sect. 4. cap. 3.

r] Bart. ubi sup. nu. 26. & Jas. ibid. nu. 32.

s] Bart. ibid.

t] Fulg. ubi sup. nu. 44.

u] Jas. ib. nu. 32.

w] L. 1. § fin. ff. de jur. delib.

And thus although here hath been distinctly touch'd each of the *Three Species* or kinds of *Jurisdiction*, taking the word *Jurisdictio* as the *Genus generalissimum*; And although here have been given some instances for the more clear description of each *Member* or *Degree* of each *Species* thereof; yet all this would be but imperfect if such things as are or may be both of *Merum Imperium* and of *Jurisdictio Simplex* also, but in divers respects, should be omitted. Of this kind therefore is that *Tortura*, formerly hinted at; which, when it is imposed or executed *Ad panam*, or in *Criminal* Causes *Ad veritatem eruendam*, is of *Merum Imperium*; [x] But when in Civil Causes it was wont to be used or imposed, because the witnesses did *vacillare*, and were inconstant, staggering or wavering in their testimony, it was then of *Jurisdictio Simplex*. [y] In like manner all *moderate* and light *correction* or punishment being inflicted *Ad panam Levis Delicti*, is of *Merum Imperium*; but being imposed for *contempt* or contumacy in *Civil* Actions, it is of *Jurisdictio Simplex*. [z] Also, *Excommunication*, when pronounced *Ex Publica Causa* against rebellious and contumacious persons, is of *Merum Imperium*; but being pronounced *ad instantiam partis*, it is of *Jurisdictio Simplex*. [a] So likewise *Restraint* or *Imprisonment*, when imposed by the *Canon Law ad delictum puniendum*, is of *Merum Imperium*; when otherwise imposed,

x] Bart. in l. interdum. § qui furem, ff. de Furt.

y] Anth. de Test. § Si vero ignoti, col. 7.

z] Ang. & Jason. in L. Imperium, ff. de Jurisd.

a] Panor. in cap. Cum contingat. col. 5. De Foro Competent.

ſed, it is of *Juriſdictio Simplex*. [b] Laſtly, *Appeals* in all *Criminal* Cauſes are of *Merum Imperium*; but in *Civil* Cauſes they are both of *Juriſdictio Simplex*, and of *Merum Imperium* alſo. [c]

There are alſo in the Law (for theſe things are only hinted to the memories of ſuch as know the Law) ſeveral other Diſtinctions of *Juriſdiction*. Such as *Juriſdictio Voluntaria & Contentioſa*. [d] But this is a Diſtinction in reſpect of the parties Litigant; the former Diſtinctions being in reſpect of the Judges themſelves. There is alſo *Juriſdictio Ordinaria & Delegata*; which though a very common received Diſtinction from the *Speculator*, [e] yet in truth 'tis leſs true then common, and is reproved by *Bartol*, becauſe the one differs not from the other according to the Law of Diſtinctions, both being in their nature one and the ſame, though diverſified in the exerciſe thereof; For the Judge Delegate doth but exerciſe *Juriſdictionem Delegantis*. [f] There is alſo *Juriſdictio Prorogata*; as when the parties litigant do of themſelves conſent unto a Juriſdiction in one, who without ſuch conſent were no Judge in the Caſe; [g] but this ſeems more like a compromiſe or arbitrary deciſion, then like a Juriſdiction properly ſo called.

There are ſeveral other Diſtinctions of Juriſdiction in the Law, here purpoſely omitted as being not ſo pertinent to the deſign in hand; This therefore that hath been

b] Alb. Bald. Sal. Alex. Jaſ. in dict. Imperium.

c] Definit. Juriſd. nu. ult. ff. de Juriſd.

d] L. 2. ff. De Offic. Proconſ.

e] Spec. de Juriſd. in prin.

f] Bart. in L. Imperium. ff. De Juriſd. om. Jud. nu. 26.

g] L. Si Convenerit. ff. eod. & l. ſed & ſi. ff. de Precario.

said may suffice for a hint to all such Appendexes on the Law, as sollicite rather for the Lawyer then the Clyent, to learn what a Jurisdiction in the eye of the Law is, before they attempt the invasion thereof.

To apply the premises, and so to conclude this point with *Omphalius*, that famous and Modern German Lawyer, [b] *Jurisdictio est res individuabilis: si tamen ejus Domini in eodem Territorio dissentiant in Exercitio Jurisdictionis, pertinebit ad Superiorem Potestatem, Concordia partes interponere, vel usum Jurisdictionis Exercendæ dividere.* This seems to be the Admiralties Case *in terminis*. All Jurisdictions are essentially radicated only in the Prince or Supreme Magistrate. [i] The Law ranks them *inter Regalia Principum*. [k] The right and power of the conservation of Jurisdictions doth lodge and reside properly there, from whence they had their being and origination. *Jurisdictiones omnes ab ipso Principe velut Rivuli a fonte suo manarunt.* [l] When the Prince or Supreme Authority *Ex plenitudine Potestatis* doth create or constitute a Jurisdiction, he doth not devest himself of the right of expounding his own Grant, according to that in the Law, [m] *Jurisdictio licet concedatur a Principe, semper tamen inhæret ejus ossibus.* So that when differences do arise concerning the rights or demands, the Ampliations or Restrictions, the Latitude or Boundaries of Jurisdictions, the Prince is the competent Judge to decide and

b] Omphal. l. 1. Civil. Polit. cap. 105. nu. 14. & L. Lucio. ff. de Aqu. quot. & æstiv. & Ang. in l. 2. § ex his, ff. de verb. Sig.

i] Car. Tap. in ff. de Const. Prin. cap. 4. nu. 10. & Marant. Distinct. nu. 3.

k] Auth. Quæ sunt Regalia. Coll. 10.

l] L. 1. ff. ubi sup. & l. 1. § cum urbem. ff. de Offic. Præf. Urb. & l. 1. Cod. eod. tit.

m] Tap. ubi supra nu. 14.

and reconcile; In this case therefore to *Cæsar* is the Appeal.

CHAP. VI.

Of Prohibitions; Their several kinds, Causes and Effects in the Law.

HAving spoken of *Jurisdictions* in general, it may not now be of less consequence to enquire, of what superseding faculty a *Prohibition* in its original and due intendment of Law may be in point of right and power for the removal of the Cognizance of Causes from one Jurisdiction to another. And although in the precedent Chapter there hath been a clear and distinct Prospect of the matter of *Jurisdictions* out of the Civil Law, being the best and indeed the only Law that could with such transparency present us with an object of that depth and difficulty, yet now being to look through other *Mediums*, so clear a sight of *Prohibitions* may not be expected to be presented in the same Glass; For *Prohibitio* in the sense now intended, may not be taken for *Interdictum, quo Prator vetat aliquid fieri*: [a] not be thence dissected into its several kinds and distinctions according to the Analogy of Civil Law; This would be as little

[a] L. 1. § interdictum, & l. 2. ff. de interdict. & § Prohibitoria, Instit. eod. tit.

pertinent to the preſent purpoſe in hand, as rationally it could expect of credit or belief out of its proper Sphere. Suffice it therefore that it be deſcribed under ſuch Rules and Characters as the Law of this Realm doth not diſown. It ſhall therefore only be premiſed what *Boerius*, that famous *Civilian* ſays of it; [b] That a Judge in matters cognizable before him, may prohibit ſuch as are within his Juriſdiction, from impleading any in another Court to his prejudice; And that an *Eccleſiaſtical* Judge may iſſue his Mandate to a Judge *Secular*, prohibiting him from medling with matters of *Eccleſiaſtical* Cognizance. And the ſame *Boerius* in another place [c] ſays, That in ſuch caſes of Exceſs by the power of one Juriſdiction exerciſed over another, the King is to decide the Controverſie.

A *Prohibition* in the ſenſe moſt adequate to the purpoſe in hand, is a Writ forbidding to hold Plea in a Matter or Cauſe ſuppoſed to be without the Juriſdiction and Cognizance of that Court where the Suit depends; *Sir* Thomas Ridley *calls it a Commandement ſent out of ſome of the Kings higher Courts of Record, where Prohibitions have been uſed to be granted in the Kings Name, ſealed with the Seal of that Court, and ſubſcribed with the Teſte of the chief Judge or Juſtice of the Court, from whence the Prohibition doth come, at the ſuggeſtion of the Plaintiff, pretending himſelf to be grieved by ſome Eccleſiaſtical or Marine Judge,*

[b] Boer. Deciſ. 114. nu. 2. & ibi Faber. in L. ante fin. Cod. de Off. Præf. Urb. per Tex. in C. Tranſmiſſa. De Foro Compet. & Paris de Put. in Syndicat. Tit. de Exceſs. Baron. cap. ult. & Ang. in l. hæredi. De Uſu fruct. Legat. ut voluit Baldus in Proœm. 2. lib. Decret. Colum. 2.

[c] Boer. Deciſ. 9. nu. 15. & Bar. & Alex. in L. omnibus. § is videtur. ff. Si quis jus dic. non obtemp.

Sir Tho. Ridleys *View of the Civil and Eccleſiaſtical Law*, in part. 3. cap. 1 ſect. 2.

Judge, in non-admittance of ſome matter, or doing ſome other thing againſt his right, inhis or their Judicial Proceedings, commanding the ſaid Eccleſiaſtical or Marine Judge to proceed no farther in that cauſe, upon pretence that the ſame doth not belong to the ſaid Eccleſiaſtical or Marine Judge. But this deſcription of the Writ of Prohibition, though large enough, yet not comprehenſive enough; For Prohibitions may iſſue to Courts that have neither Eccleſiaſtical nor Marine Cognizance, as appears by the Learned *Fitzh.* who among *Sixty* ſeveral Caſes by him mentioned, wherein a Prohibition doth lye, doth not inſtance in any againſt the Admiralty; Nor do the Statutes (though expreſs as to Prohibitions againſt Courts Eccleſiaſtical) ſpeak of any *in expreſs terms* or in the *letter* of it as againſt the Admiralty. Hence probably it is that the Authour of the *Terms of the Law* [d] makes no other deſcription of a Prohibition then this, viz. *That it is a Writ that lyeth where a man is impleaded in the Spiritual Court of a thing, that toucheth not Matrimony, nor Teſtament, nor meerly Tithes; And this Writ ſhall be directed as well to the Party as to the Judge or his Official, to prohibit them that they proceed no farther; But if it appears afterwards to the Judges Temporal, that the matter is to be determined by the Spiritual Court, and not in the Court Temporal, then the Party ſhall have a Writ of* Conſultation, *commanding the Judges of the Court Spiritual*

Fitzh. N.B. verb. Prohibit.

[d] *Terms of Law*, verb. Prohibit.

tual to proceed in the first Plea. Which description of the Writ of Prohibition is consonant to the Statute of 2 Ed. 6. cap. 13. whereby it is provided, *That he that sueth for a Prohibition, shall make a Suggestion and prove it by two witnesses; And in case it be not proved true by two witnesses at the least in the Court where the Prohibition is granted, within six moneths next after the said Prohibition; then the Party so hindred by such Prohibition, shall have a* Consultation, *and recover double costs and damages against the party that sued for the Prohibition.* And in the said description of a Prohibition by the Authour of the *Terms of Law*, there is not any thing expres'd as to a Prohibition against the Admiralty, but only against Judges in matters Spiritual, wherein the Court of Admiralty is not concern'd; By the Proceedings whereof there is not (as in the other once was) the least pretence for any fear of dis-inheritage of the Crown-Rights, which will be agreed to be originally the *Causa finalis* of Prohibitions. Whence it was long since observed and published by a Learned Civilian of this Nation, [e] *That this Writ of Prohibition in those days may well be spared; For although it were some help to the Kings inheritance and Crown, when the two Swords were*

[e] D. Cowel Interp. ver. Prohibitio.

It may not be hence inferred, That what seems to cease of use in one respect, may not remain of use in another; As indeed this is, in Conservation not Derogation of Jurisdictions; and for prevention of Trials Coram non Judice Competente, *by an expedient of Law, whereby the Cognizance of a Cause may not be drawn from its proper Jurisdiction* ad aliud Examen.

in

in two divers hands; yet now that both Jurisdictions are settled in the King as the only Supreme Magistrate, there is little reason thereof. And indeed the Jurisdiction of the Admiralty of *England* was ever inherent in the Crown of *England*; so that there was never in that sense that parity of reason for Prohibitions against the one as against the other. That which at first hath its origination from a principle of well-grounded policy, and is of good use in one age, may afterwards be otherwise in another, specially if the Rule *Cessante Ratione cessat Lex* should hold in this case as in others. The Fiery Brazen Serpent when first erected, was of happy use; yet when abused by the people, *Hezekiah* brake it in pieces; [*f*] yea, though of Divine Institution, yet when it became a snare to the people, that good King did not scruple to call it *Nehushtan*. The Court of Admiralty is one of the Courts Temporal, one of the Courts of our Soveraign Lord the King, and long since owned as such, as appears by the *Resolutions* upon the Cases concerning the Jurisdiction of the Admiralty in *Anno* 1632.

[*f*] Num. 21. 8. & 2 Kin. 18. 4.

Nehushtan, h. e. *Brass, or Brazen, or a piece of Brass.*

If the Court of Admiralty be one of His Majesties Temporal Courts, then the old Argument of the Conservation of the Crown-Rights, seems not to hold in this case, and only for that Reason, as to Prohibitions against the Admiralty; as well for that the said Court is a Court Temporal, as that it is one of His Majesties Courts; specially

This implyes not, but that Prohibitions are still of necessary use, where Inferiour Jurisdictions meddle with matters which do not concern them, and wherein they are incompetent.

cially in Caſes that are either *Locally* or *Materially* Maritime. It may not therefore be much material to inquire whether Prohibitions do lye as well againſt Temporal as Spiritual and Eccleſiaſtical Courts; For admitting a *Prohibition* according to the Learned *Fitzh.* [g] to be *A Writ for the forbidding* any *Court*; *either* Spiritual *or* Secular, *to proceed in any Cauſe there depending, upon ſuggeſtion that the Cognition thereof belongeth not to the ſaid Court*; yet it is preſumed that this doth not concern ſuch Caſes as *primo intuitu* appear to be *Locally* Maritime, or according to the nature thereof have been time out of mind properly of the Admiral Cognizance; For without doubt the ſuggeſtion mentioned in the ſaid definition doth not in conſtruction of Law pretend to any thing beyond the very truth of what is ſuggeſted; or ſo, as to tranſplea a Cauſe from one Juriſdiction to another, *abſque minimo fumo probationis*, of the truth and reallity of the ſuggeſtion, or that the Cognition of the Cauſe belongeth not to the Court Prohibited. Thus having ſeen what a Prohibition is, which in truth is no more but this, *viz. A Charge by Writ to forbear to hold Plea either in ſome matter or manner, which (as is ſuppoſed or ſuggeſted) a man dealeth in beyond his Juriſdiction, or otherwiſe then Law will warrant*; It follows, That

Fitzh. N.B. fo. 39. Cowel Interp. verb. Prohibit.

Every Prohibition is either *Prohibitio Juris* by the Law it ſelf; Or *Prohibitio hominis*,

minis, where the Miniſtery of a competent Judge is uſed; or *Prohibitio Facti*, of meer Fact, where it hath no ſufficient ground or foundation in the Law: The Second of theſe, *viz.* the Miniſtery of a competent Judge is ſo eſſential, as without which neither of the other can proceed. *Prohibitio Juris* is a very Prohibition in it ſelf, and therefore it is a contempt to ſue againſt it. *Prohibitions* of *Law* are ſuch as are ſet down by any Law or Statute of this Land, whereby Eccleſiaſtical Courts are interdicted from dealing in the matters in ſuch Statutes contained. Such are the Statutes of 2 *Ed.* 6. *cap.* 13. whereby Judges Eccleſiaſtical are forbidden to hold Plea of any matter, cauſe, or thing, being contrary or repugnant to or againſt the effect, intent, or meaning of the Statute of *Weſtminſter* 2. *cap.* 3. the Statutes of *Articuli Cleri*, *Circumſpecte agatis*, *Silva Cadua*, viz. 43 *Ed.* 3. *cap.* 3. The Treatiſe *De Regia Prohibitione*, Stat. 1 *Ed.* 3. *cap.* 10. ſuch alſo is the Statute of 9 *Ed.* 2. *cap.* 2. There are alſo other Statutes declaring in what Caſes Prohibitions will not lye; Such are the Statutes of 9 *Ed.* 2. *cap.* 1, 4, 5. Alſo 18 *Ed.* 3. *cap.* 5. & 50 *Ed.* 3. *cap.* 4. Prohibitions of *Fact*, are ſuch as having no ſolid foundation (as the other) on the Laws and Statutes of this Kingdome, may yet *pro tempore* have ſome kind of operation like *Prohibitio Juris*, becauſe therein alſo is *Prohibitio hominis*, or the Miniſtery of the Judge

Ridley *View of the Civil and Eccleſiaſtical Law*, part. 3. cap. 1. ſect. 2.

or

or Superiour Magistrate. Such Prohibitions of Fact (where they happen) may administer more matter for Lawyers to work on, then possibly the merits of the Cause require, and have in former times occasioned several Complaints by reason of the perplexity of Law-Suits, uncertainties in matters of Jurisdiction, multiplicity of litigious Controversies, excess of Charges, delayes of Proceedings, retardations of Justice, and the like. Hence it was, that Sir Tho. Ridley in his *View* of the Civil and Ecclesiastical Law so long since on this Subject said, [b] *That the Right of the Supreme Magistrate is not to be supposed by Imagination, but to be made plain by Demonstration. And so both the Statute of* 18 Ed. 3. cap. 5. *is, whereby it is Provided, That no Prohibition shall issue, but where the King hath the Cognizance, and of right ought to have; which is very observable; And also by the fore-mentioned of* 1 Ed. 6. *which prohibits Prohibitions to be granted otherwise then upon sight of the Libel, and other Circumstances in the said Statute expressed. By which it is intended, the meaning of the Law-givers was not that every idle suggestion of every Attorney should breed a Prohibition; but such only should be granted, as the Judge according to Law should think worthy thereof, if there were Right to deserve it.* Where the said Sir *Thomas Ridley* goes on and says, *That a comparation between the two Laws in the beginning brought*

[b] Ibid.

in theſe multitude of Prohibitions, either againſt or beſide Law: ſo the gain they brought to the Temporal Courts maintaineth them; which alſo (they are his words) *makes the Judges that they ſeſſe not Coſts and Damages in Caſes of Conſultation, (although the Statute preciſely requires their aſſent and aſſignment therein) becauſe they would not deterre other men from ſuing out of Prohibitions, and purſuing the ſame.* Though this was the Obſervation, and theſe the very words of Sir *Thomas Ridley* upon this Subject in his time, yet we may not thence inferre that ſo it is alſo now in our time, ſpecially now that Juſtice runs again in its proper channel, and her ballance equally poized; It was too true that in late years of unhappy memory the ſaid words and obſervation of that *Civilian* were too ſadly verified; which now no doubt will in ſome ſhort time (as is already in a good degree) be completely rectified.

Though by Warrant from the Proverb, Loſers have leave to ſpeak; *yet in caſe of Intereſt, ſuch as cannot hold their own, may hold their peace.*

In order to a Prohibition there is to precede ſuch a ſuggeſtion as may be proved, not ſuch a ſuggeſtion as is not capable of proof; Improbable ſuggeſtions lay no foundations; Non-Entities are no Baſis for Exiſtencies; It hath been a Rule without Exception ever ſince the Creation, That *Ex nihilo nihil fit.* By ſuggeſting the *Place*, where a Contract is ſuppoſed to be made, to be at *Bordeaux* in *France* in *Iſlington* in the County of *Middleſex*, ſeems to imply as if the alledging the Place, (*viz.* to be within the body of

ſome

some County within the Realm) were essential for the entituling of that Jurisdiction, where such suggestion is made, to a Cognizance of the Cause grounded upon that suggestion, so that the *Place* seems to be of such Jurisdictional weight, as not capable of being transplocated by the highest strength of Imagination, which may present strange things in Apparitions, but cannot possibly enervate the energy of Truths and Realities; And thence possibly it is, that for prevention of improbable surmizes, as a suggestion may be *quasi Causa sine qua non* of a Prohibition, so the said Statute of 2 *Ed.* 6. *cap.* 13. provides that probability by witnesses (which cannot be without verity) be a due requisite of suggestions. The Lord *Coke* upon this Subject of suggesting and surmizing, *viz.* of places beyond Sea to be as within the Body of some County within this Realm, doth acknowledge, [i] That there is variety of Opinions in the very Books of the Common Law upon this point. This kind of suggesting and surmizing did in late years of fatal memory much impede the Judicial Proceedings of the Admiralty, when it was no rare thing to meet with a suggestion of a Contract to have been made or other thing done upon the Land in some certain place within the Body of some County, that really and in truth was made or done upon or beyond the Seas, and farther possibly then the suggestor ever saw in a *Map*. The *Civilians* say, there are certain

This hinders not, but that a thing really done super altum mare, *(though not yet so in proof) may be surmized or suggested to be done at Land, in order only to bring it to issue, whether a Prohibition lyes in the Case. This is but the Law of one Jurisdiction without any derogation of another.*

i] Cok. Inst. l.3.c.7.sect. 440. in fin.

Cases

Caſes wherein *Prohibitio vim ſuam non exercet*, whereof one is, *Quando aliquid prohibetur ſine Cauſa*; and the Law of this Realm allows another, and that is, *Quando Conſultatio conceditur.*

Prohibitions in the Law there are of other kinds, though not ſo pertinent to the purpoſe in hand; Such is the Writ *Indicavit*, as in matter of Tithes; [k] This lyeth alſo for the Patron, where the Incumbent is impleaded for the Advowſon or right of Patronage in a Spiritual Court; though it lyeth not till the Libel be brought to be viewed in Chancery, *Et Lis Conteſtata*; [l] And it lyeth only before Sentence is given in the Eccleſiaſtical Court, being afterwards void. Laſtly, a Prohibition ceaſeth and loſeth his vertue after a *Conſultation* is granted, as appears by the Statute of 24 *Ed.* 1. which declares in what Caſes a *Conſultation* is grantable; which again is afterwards more full in the Statute of 2 *Ed.* 6. *cap.* 13. whereby it is enacted, *That a* Conſultation *ſhall be granted for default of proving the ſuggeſtion, and double Coſts and Damages (as aforeſaid) awarded to the party hindred by ſuch Prohibition, againſt him that ſo purſued the ſame.* And where a *Conſultation* is once truly granted, the Judge formerly prohibited, ſhall according to the Statute of 50 *Ed.* 3. *cap.* 4. proceed in the Cauſe, notwithſtanding any other Prohibition thereupon, provided the matter in the Libel be not altered.

[k] Fitzh. N. B. tit. Prohibitio.

[l] Fitzh. Ibid.

CHAP. VII.

Of Fictions; *what a* Fiction *in Law is; how farre and in what cases* Fictions *may be used according to the Rules of Law.*

BY *Fiction* is here intended no other then such as the Law it self intends, no other then such as being authorised by Law, and introduced upon a warrant of Law, hath in operation the due effect of Law. As for other *Fictions*, the Law understands them but as meer Cyphers, tollerating none but such as are grounded upon and regulated according to the just Principles of the Law; The Essence of Law being more Rational, her Designs more Equitable, her Mediums more feasible, and her style more serious and venerable; then to hazard either under the Conduct of any Notions inconsistent either with *Equity* or *Possibility*; For the *Law* doth imitate *Nature*; Such *Fictions* therefore as cannot endure the Test of Law, are Fictions indeed, proper only for a Comment upon *Lucians* Dialogues. To proceed therefore to the Law.

A *Fiction* in the eye of the Law, and such whose Practice may be warranted by Law, is *Legis adversus veritatem in re Possibili ex justa causa dispositio.* [a] So that it is *Legis*

[a] Schard. ver. Fictio.

non

non hominis diſpoſitio; it muſt be a *Fiction* framed according to the Rules of Law, not whatever is imaginable in the conceptions of Man. This word [*Diſpoſitio*] is ſometimes taken for a *quality* of the mind, or imperfect habit, that is, an Inclination or Affection. [*b*] But in this place it ſignifies an Act proceeding from good Authority of Law; for it muſt be *Ex juſta Cauſa*; which word [*Juſt*] hath divers acceptations or ſignifications in the Law; As ſometimes it is oppoſed to that which is wicked or contrary to *Juſtice* and *Equity*; whence it follows, that the *Suggeſtor* may not frame or model a *Fiction* oppoſite thereto; Sometimes the word [*Juſt*] is in the Law taken for *Full* or *Perfect*; And hereby all defects and imperfections for want of any Legal Requiſites in the Suggeſtors Notions to the fabricating of a *Fiction*, are excluded; Such are the defects or imperfections in reſpect either of *Equity* or *Poſſibility*; For as the ſuggeſtions are to ariſe *ex juſta cauſa*, ſo they are to center *in re poſſibili*. But to prevent miſtakes, let it not be hence inferred, as if it were here implyed, that all *Surmizes* and *Suggeſtions* at Law in order to remove or tranſplea a Cauſe from one Juriſdiction to another, were ſuch *Fictions* as fall not within the compaſs of the ſaid Definition of a *Legal Fiction*; If any ſuch inconſequent conſtruction be made of the Premiſes, or ſhall be made of what follows, it is no mans errour but the Readers;

[*b*] Caſ. Tract. Dialect. 2. part. cap. 20, & 21. Vid. Larrea. Deciſ. Granar. Diſp. 8. nu. 58. Semper *Fictio*, Licet veritati contraria, tamen veritatem imitatur. § Minorem. De Adopt. & l. Si Filius, 14. D. Si Cer. per. & l. Triennio 18. D. de Stat. Liber. Et ſolum extenditur ad id quod per veritatem & rerum Naturam fieri poteſt. Gloſ. in l. 3. D. Pro Socio, & Curt. l. 2. Conject. ad fratrem, cap. 13. & Oſwald. l. 14. ad Donel. cap. 19. lit. A.

For though all Fictions, whether Legal or illegal, may be Surmizes, Suggestions, or Suppositions, yet all Surmizes or Suggestions are not illegal Fictions; And many of the Suggestions used in the Practick part of the Law for the end aforesaid, are both true, equitable, and possible, and consequently probable, and so of good and necessary use in practice, according to the Law in the Statute of Prohibitions in that behalf provided; And this not by way of digression, but *ad majorem & necessariam Cautelam*, to prevent all mis-apprehensions.

The foresaid Definition of a *Fiction* Legal, not finding general entertainment among the DD, it may be free to incline with the more received opinion to *Bartols* definition thereof; whose words are [c] these, viz. *Fictio, est in re certa, ejus quod est possibile adversus veritatem, pro veritate à jure facta assumptio.* A Fiction is an Assumption of Law upon an untruth for a truth, against the truth, in some thing possible to be done, but not done. So that Surmizes and Suggestions in Judicial Practice that are *true*, are not (as was aforesaid) *Fictions.* In this definition it is said to be *in re certa*, to difference it from *Presumption*, which ever fixes upon something that is *dubious*, [d] yet carries so much of truth with it, as without better evidence is not counterpoized; But *Fictio fit super Certo*, [e] *Super Falso & Certo fingitur; Super Vero & Incerto præsumitur.* [f] Likewise, in this

[c] Bart. in l. Si quis pro Emptore. D. de usucapionib.

[d] L. Sive possidetis, Cod. de Probat. & Cyn. ibid. & J. non est verisimile. D. Quod metus causa.

[e] Ibid. in glos. mag. in l. non est verisim.

[f] Gothof. ad Rub. D. de Probat.

in this definition it is ſaid to be *Ejus quod eſt poſſibile*, becauſe *Super eo quod eſt impoſſibile non poteſt fingi.* [g] Of *Impoſſibilities* there can be no Fiction according to Law whereon to ground any Suggeſtion. Reaſon it-ſelf proves this, for Art (as aforeſaid) ever imitates Nature; And what is *impoſſible* according to *Nature*, is *impoſſible* according to *Art*; and though Art in ſome ſenſe may be ſaid to perfect *Nature*, yet it may not contradict *Nature* in any ſenſe. A *Fiction* in *Law* ever imitates a *poſſibility* in *Nature*. [h] Again, it is ſaid to be *Adverſus veritatem*, becauſe if it were really true, it would ceaſe to be a Fiction, yet withal it is ſaid to be *pro veritate*, An Aſſumption of Law upon an untruth for a truth, becauſe it hath the effect of Law, being thus qualified, as fully as if it were an Aſſumption upon a Truth. Laſtly, it is ſaid to be *à jure facta Aſſumptio*, to exclude all illegal untruths, which are not of *Law*, but of *Man*, and therefore have not the deſigned effect in operation of Law.

[g] Bart. ibid. nu. 22.

[h] L. Adoptio. ff. de Adopt.

The premiſes conſidered, it is moſt evident, That on every *Fiction* according to Law, attend two ſuch Eſſential Requiſites, that if either of them be wanting, it ceaſes to be a *Legal Fiction*; The one is *Equity*, the other is *Poſſibility*; Theſe are the *Duo Neceſſaria* to every *Legal Fiction*; And ſuch Fictions thus qualified, are introduced by the Civil Law, wherein among many others there are ſpecially two that may be

ſaid to be the Capital or more Principal *Fictions* in the *Law*; The one whereof is *in Lege Cornelia*; The other *in jure Poſtliminii*; A Fiction *Legis Cornelia* takes place, when a Captive *intra præſidia hoſtium* dyes under ſuch Captivity; For if ſo, then ſuch Captive by that Law, if he made a Will before ſuch his being taken Captive, ſhall in favour of ſuch Will, and for the upholding of the ſame, be *feigned* to be dead *in puncto temporis*, immediately before ſuch his being taken Captive. [*i*] And ſo by that Legal Fiction of Death his Will is firm and valid, as if he had really dyed without ever being taken by the Enemy. That *De jure Poſtliminii* is, whereby for the preſervation of a mans right of property, the Law doth *feign* him that is returned out of Captivity to be and to have been as if he had never been Captive, or at all abſent from that place of his freedome and priviledge, whereof he was before ſuch his Capture; [*k*] whereby he is redintegrated into his priſtine ſtate and condition. As it is thus as to *Perſons*, ſo alſo is it as to *Things*, ſuch only excepted as by Law are exempted from the priviledge of *Poſtliminium*.

i] Le. Cornelia. ff. de Teſtam. & l. Cornel. ff. de Vulg. ſubſtit.

k] L. retro. & l. in bello. § 1. & l. bona. ff. de Capt. & § 4. D. Quibus mod. jus. patr. ſolvit.

There are divers other *Fictions* in the Law, though of leſs weight, which have not any dependance at all on the former, yet not one of them without *Equity* and *Poſſibility*. Thus he that is in contempt for non-appearance in Court upon due Summons, is by Law *feigned* to be preſent, that ſo neither the

Law

Law might be rendred Elusory by his absence, nor himself get any advantage by his own Laches, nor the adverse party receive prejudice by the others contempt. [l] So on the other side, he that is present in Court, but doth there lurk and hide himself, *vel latitare inter columnas*, is by the Law *feigned* to be absent. [m] Also, he that is *in utero*, and as yet unborn, is by the Law *quoad suum commodum*, feigned to be born, left otherwise he should be left without remedy as to a childs portion. [n] Likewise, such as enter into mutual Contracts of Partnership, though themselves may not therein create Fictions other then the Law allows, yet in matters of Society and Partnership the *Lex Aquiliana* doth *feign* a mutual stipulation or hypothecation in such Comfortship, which the Law styles *stipulatio Aquiliana*, & in such cases *Socius socio tenetur Lege Aquiliana*. [o] And in such cases of Partnership for the acquisition of a *Dominium* and Property in all the goods in Partnership without any actual delivery, the Law doth tacitly feign such a delivery, albeit it never specially intervened. [p] Likewise the Law feigns the person of one to represent the person of another, that so *Nephews* and *Nieces* may succeed together with their *Uncles* and *Aunts* in their *Grandfathers* and *Grandmothers* goods and chattels, for so much thereof as should have come to their *parents* respectively, in case they had been alive at the time of their said *Grand-parents* decease. [q] In like manner he

[l] L. Absentē, ff. de verb. Sign.

[m] L. ibid. glos. mag.

[n] L. qui in utero, & l. pen. ff. de stat. hom.

[o] ff. Ad Leg. Aquil. & Rub. ibid. & l. Si ex causa. D. Pro Socio.

[p] L. quia licet ff. Pro Socio.

[q] L. 1. § Si Filius. ff. de suis & legitimis, & l. 2, 3, 4. Cod. eod.

he that is dead, may by Law be *feigned* to be alive to ſeveral conſtructions and operations of Law, if others his equals in age be then alive, or in caſe his being really alive at ſuch time of *feigning* him to be alive, doth not exceed the natural age of man. [r] Many more inſtances of *Legal Fictions* might here be added, but theſe may ſuffice for proof, that though the *Law* allows of *Fictions*, yet never but where there is *juſta cauſa* with *equity* and *poſſibility*, diſowning all others as *Monſtrous Fictions*, that are propagated meerly of the froth of the brain; for the *Law* (as aforeſaid) ever reſembles and imitates *Nature*; And therefore if any man will enter the liſts with *Lucian*, or ſtrain his imagination to forge rarities beyond his Dialogues, and *feign* a battel of *Elephants* to be fought on a Cobweb in the Air, or freſh water-ſpring to riſe out of the Whales belly, or a Mine of Gold fifty fathome under ground in the middle Region of the Air, or the like, he may expect no protection from the Law for ſuch irregular Notions.

[r] § Sed ſi in bello. Inſt. de Excuſat. Tutor.

A *Legal Fiction* under the foreſaid qualifications, is threefold; either *Inductiva*, or *Privitiva*, or *Tranſlativa & Extenſiva*. A *Fiction Inductive*, is, when the Law *feigns* that to be which indeed is not; A *Fiction Privitive*, is, when the Law *feigns* that not to be which indeed is; And a *Fiction Tranſlative* or *Extenſive*, is, when the Law doth *feign* a thing to be done in one manner, which

which in truth is done in another. The first of these, or the *Inductive Fiction*, is an Assumption of Law in a thing *certain* and *possible*, upon a non-existency for an existency; The second, or the *Privitive Fiction*, is alike definable, only the words inverted; And the third, or *Translative Fiction*, is only an Assumption of Law more upon the *Modus* then the *thing* it self; So called, because it is mainly conversant in one of these four varieties; As either when the Law by a *Fiction* transfers or translates some Act or Thing, either from one *place* to another, or from one *person* to another, or from one *thing* to another, or from one *time* to another; But which-soever of these the *Fiction* be, it must still keep within the due limits and bounds of *equity* and *possibility*. Whatever the Fiction be, it may be reduced to one of these three heads, either *Inductiva*, *Privitiva*, or *Translativa*; and neither of these but must *quadrare* with *Bartols* said definition, or the Law rejects it as spurious and illegitimate.

For the yet clearer apprehension of the premises, it may be no digression to insert a word by way of caution to the imperfect Notionist, that he would not hence infer as if the Law did *feign impossibilities*, because it supposes the *living* to be *dead*, and the *dead* to be *alive*; the *absent* to be *present*, and the *present* to be *absent*; and the like. For although they would indeed be *impossibilities*, if only considered simply in an identity

of

of *fact* and *time*, of *person* and of *place*, without their right and due diversifications; yet they are not *impossibilities*, being rightly according to the Law of Fictions distinguished in respect of fact, time, person and place, together with such transactions, translocations, transtemporations, and transpersonalities, as according to Rules of Law are requisite to every Fiction that enures to any effect in Law; For that which may seem *Deceptio intellectus*, and by mis-apprehension possibly be taken for an *impossibility* in the precedent instances of a Legal Fiction, is in truth nothing but that defect or absence of verity in the person, act, thing, manner, time or place feigned; Indeed, to look for *Truth* in a *Fiction*, is to expect an *impossibility* with as much vanity as some men do for *Revelations*: if it were possible that there could be the least *verity* in the thing *supposed*, it would immediately cease to be a *Fiction*. Legal *Fictions* may be aptly styled, *The just Policies of Law*, to attain unto the end and effect of Law by remedies extraordinary, only where the ordinary means do fail. This therefore is no warrant to fly to *Fictions* though *Legal*, much less to others, as remedies *extraordinary*, when the *ordinary* means by Law provided may be used.

This point of *Fictions* having now been put to the touchstone of the Law, and impartially weighed in the ballance thereof, it plainly appears, what kind of Fictions they

they are, that are legally qualified to take place in the Judicial proceedings of the *Civil Law* in Forraign Nations, as alſo in this Kingdome; which (before the late unnaturall and inteſtine Wars) was, and now ſeems to be for Religion, Juſtice and Commerce, *Regina Inſularum totius Orbis.*

CHAP. VIII.

That the Cognizance of all Cauſes and Actions ariſing of Contracts made, and other things done upon the Sea, is inherent in the Juriſdiction of the Admiralty.

THis Truth in the Law is not denyed in the Judgements of men, though it hath not wanted at leaſt a ſeeming Contradiction in Practice. Witneſs *Suſans* Caſe againſt *Turner* in *Noys* Reports; where it is ſaid, *That if a Suit be in the Court of Admiralty for a Contract ſuppoſed to be made* Super altum mare, *the Defendant upon a Surmize or Suggeſtion that it was made upon the Land within the Realm, may have a Prohibition.* Such and the like begat that complaint of the Admiralty, which gave the Lord *Coke* occaſion

Noy Rep. M. 39 40 Eliz. C. B. *This may be but a* Surmize *in one Juriſdiction for a* Suppoſition *in another, as an expedient whereby to diſcover unto which Juriſdiction the Caſe doth properly belong.*

occasion to assert in these words following, viz. [a] *That by the Laws of the Realm the Court of Admiralty hath no cognizance, power, or Jurisdiction of any matter of contract, plea, or querele within any County of the Realm, either upon Land or the Water: but every such contract, plea, or querele, and all other things rising within any County, either upon the Land or the Water, ought to be tryed and determined by the Laws of the Land, and not before or by the Lord Admiral or his Lieutenant in any manner: So as it is not material, whether the place be upon the Water* infra fluxum & refluxum aquæ, *but whether it be upon any Water within any County. Wherefore we acknowledge that of contracts, pleas, and quereles made upon the Sea or any part thereof, which is not within any County (from whence no tryal can be had thereof by twelve men) the Lord Admiral hath and ought to have Jurisdiction.* This was the Answer long since given to an Objection made by the Admiralty; But the Objection was, *That whereas the Cognizance of all Contracts and other things done upon the Sea, belongeth only to the Jurisdiction of the Admiralty, the same are made tryable at the Common Law, by* supposing *the same to have been done in* Cheapside, *and such like places.* So that the sinew of the Objection is, That things done upon the Sea, being cognizable only in the Admiralty, are made tryable elsewhere by *supposing* them to be done in *Cheapside*, and such like places. The said Answer

[a] Coke Inst. part. 4. cap. 12.

Anſwer ſpeaking nothing as to the ſaid manner of *ſuppoſing*, ſeems not to enervate the ſaid Objection; The Anſwer diſtinctly declares and ſets forth where and in what places the Juriſdiction of the Admiralty hath not Cognizance, *viz.* not upon Land or Water within any County; But why (according to the ſaid Objection) things done upon the Sea, and belonging only to the Admiralty, are made tryable at Common Law, by *ſuppoſing* them to be done in *Cheapſide*, and ſuch like places, ſeems yet to be reſolved; *Statutum ſimpliciter loquens, debet intelligi de his quæ vera ſunt ſecundum veritatem, non de his quæ ſunt ſecundum Fictionem.* [*b*] The ſcruple touching the ſurmize implyed in the ſuppoſition mentioned in the ſaid Objection, doth ariſe from the fact ſo ſuppoſed, as whether ſolid enough to lay foundation for ſuch ſuperſtructures as are built thereon. It is acknowledged, That of Contracts made and other things done upon the Sea, or any part thereof, which is not within any County, the Lord Admiral hath and ought to have Juriſdiction; but if this *Super altum mare* ſhould by a meer ſurmize or ſuggeſtion be tranſlocated in operation of Law, and ſo thereby become as it were *Infra Corpus Comitatus*, the ſaid acknowledgement would ſeem to be diſacknowledged, and the ſaid Objection would ſeem to be an Objection ſtill. *Veritatis congreſſus invicta eſt major veritas.* And he that ſues an Admiral Cauſe in another Court,

This is meant when the thing is ſo in truth and in fact, as well as ſuppoſed.

[*b*] Bart. in l. Si is qui pro Emptore. D. de Uſucap.

Court, ought to withdraw it, and to fine to the King. [c]

Brownlow Reports, [d] That if a Bond bear date *Super altum mare*, it must be sued only in the Admiral Court. Whether then an Obligation or other Contract made on board one of the Frigots of the Navy Royall, or the like, in the *Straights*, may be tryed in other then the Admiral Court, by alledging or supposing the same to have been made in the *Straights* in *Islington* in the County of *Middlesex*, seems to be the question; for the very truth of the fact as to the *place* of making such Obligation in the *Straights*, or *Super altū mare*, seems not to alter the Case, if the *place* so suggested is not to be *traverst*, it being as ease and as feasible to suppose and suggest the said Frigot and the *Straights*, as *Burdeaux* in *France* to be in *Islington*. But the great *Oracle* of the Law assures us, [e] *That things done out of the Realm may not be tryed within the Realm by the oath of twelve men.*

It is reported in *Palmers* Case against *Pope*, [f] *That* Jennings *libelled in the Admiralty against one* Audley, *upon a Contract said to be made* apud Malagam infra dictum Matis vocat. *The Straights of Gibralter* infra Jurisdictionem Maritimam; *And because it appeared, That the Contract was made at the Island of* Malaga, *Prohibition was granted, for it was not regarded, that he added* infra Jurisdictionem Maritimam, *which appeared contrary.* If in another Case it

c] In lib. Nig. Adm. fol. 36.

d] *Brownl.* Rep. part. 1. Mich. 10 Jac.

e] Litt. l. 3. c. 7. sect. 440.

f] Hob. Rep. in Cas. *Palmer* verf. *Pope.*

it happen to be elſewhere ſuppoſed that the Contract is made at *Bordeaux* in *France* in *Iſlington*, though by the very light of nature it appears, as ſoon as it is put, to be contrary, yet there may be that reaſon of Law to hold the place is not traverſable as to the *Infra Corpus Comitatus*, which the *Infra Juriſdictionem Maritimam* cannot duly expect, when that appears to be contrary. It was once ſaid by Juſtice *Wray* in Sir *Julius Ceſars* Caſe, [g] *That it was hard that his Juriſdiction ſhould be tryed before himſelf.* It hath been obſerved for theſe laſt twenty years, that it is far more *eaſie* to preach good doctrine then to practiſe it.

[g] *Leonard* Rep. 30 Eliz. in Sir *Jul. Caſ. Caſe*, in B.R.

The Law in all Juriſdictions is but Reaſon Regulated; No wonder therefore if ſometimes a Cauſe as to the Merits of it meet with a right Deciſion in a wrong Juriſdiction; but leſs wonder if it oftner happeneth otherwiſe. It is reported in the Caſe of *Bright* againſt *Couper*, [h] *That an Action of Covenant being brought upon a Covenant made by a Merchant with a Maſter of a Ship*, viz. *That if he would bring his Fraight to ſuch a Port, then he would pay him ſuch a ſumme; it was ſhewed that part of the goods were taken away by Pyrats, and that the reſidue of the goods were brought to the place appointed, and there unladen; And that the Merchant had not paid, and ſo the Covenant broken; And the queſtion was, whether the Merchant ſhould pay the mony agreed for, ſince all the Mer-*

[h] *Brownl.* Rep. Par. 1. Caſe *Bright* verſ. *Couper.* Trin. 9 Jac. Rot. 638. in Com. Plac.

Merchandizes were not brought to the place appointed; And the Court was of opinion, that he ought not to pay the mony, because the Agreement was not by him performed. Here is no mention made of a penny-fraight paid for the residue of the goods brought to the place appointed, albeit there was *Vis major*, or *Casus Fortuitus*, without any default in the Master or Mariners, in the Case; the Court being of opinion that he ought not to pay the mony, because the Agreement was not by him performed; nor had it been performed in case of stress of weather, part of the goods had *Navis Levanda causa*, been thrown over-board; probably this Pyracy, whereby came this casual incapacity of performing the Agreement, was *Super altum mare*. And the same Reporter in *Westons* Case, [1] *A Merchant hath a Ship taken by a* Spaniard, *being enemy, and a moneth after an* English *Merchant with a Ship called the* Little Richard, *re-takes it from the* Spaniard; *And the Owner of the Ship sueth for that in the Admiralty Court. And Prohibition was granted, because the Ship was gained by battel of an enemy.* Probably this Capture and Re-capture, the occasion of this plea and querele, was only *Super altum mare*; and the property of Shipping called into question by reason of such supermarine accidents, the matter of this plea and querele, is of every days practice in the Admiralty, and so accustomed time out of mind. But at another time in a Case something

[1] Brownl. Rep. Par. 2. Westons Case. Mich. 8 Jac. 1610. in B. R.

something parallel to that *quoad merita Cau-ſa ſuper altum mare*, A Prohibition would not be granted, [k] *A* Dunkirker *having ſei-ſed a* French *mans Veſſel* Super altum mare, *ſold the ſame with her Lading at* Wey-mouth, *whither it had been driven before its brought* infra præſidia Dom. Regis Hiſpan. *whereupon the* French *man Libelled in the Court of Admiralty againſt the Vendee* pro intereſſe ſuo, *who ſhewed that it was taken not by Letters of Mart, as was pretended, but by Piracy; And prayed a Prohibition. And it was agreed by the Juſtices, That if a Ship be taken by Piracy, or by Letters of Mart, and be not brought* infra præſidia, *of that Prince by whoſe ſubject it was taken, that it is no lawful Prize, and the Property is not altered: and ſuch was ſaid to be the Law of the Court of Admiralty. And there-fore the Court would not grant a Prohibition.* In the former Caſe where Prohibition was granted, the property of the Ship ſeems not to be altered, for though ſhe were, as that Caſe puts it, taken by an Enemy, and a moneth intervened between the Capture and re-Capture, and ſo did *pernoctare* with the Captors, yet it does not appear by that Caſe that ſhe was ever brought *infra præſidia hoſtium* before ſuch re-capture, or that ever *Judication* paſſed thereon; And if there were any alteration of Property of that ſhip, the Property muſt have been altered *Super altum mare*, which is properly Cognizable in the Admiralty in reſpect of the Place as well

[k] Trin. 17 Char. in B.R. *Grand Abridg-ment of the Law.* Verb. *Admiral.*

Res quæ intra Præſidia per-ductæ nondum ſunt, quan-quam ab ho-ſtibus occupa-tæ, Dominum non mutarunt ex Gentium jure, Gror. de jur. Bel. l. 3. c. 9.

well as the thing it ſelf in its own nature. *Littleton*, that famous *Oracle* of the Law, as aforeſaid, aſſerts, [*l*] *That a thing done out of the Realm may not be tryed within the Realm by the oath of twelve men.* The Lord *Coke* (as aforeſaid) acknowledgeth, [*m*] *That the Lord Admiral hath and ought to have Juriſdiction of Contracts, pleas and quereles made upon the Sea, or any part thereof not within any County.* And Sir *George Crook* ſays, [*n*] *That if a Suit be commenced in the Court of Admiralty upon things done upon the Sea, no Prohibition is to be granted.* Therefore it follows, that Contracts made and other things done upon the Sea are inherent in the Juriſdiction of the Admiralty.

[*l*] *Litt.* l. 3. c. 7. ſect. 440.

[*m*] *Coke* Inſt. Par. 4. c. 22.

[*n*] Cro. Rep. in Reſol. *upon the Caſes of the Admiral Juriſdiction.* Hill. 8 Char.

CHAP. IX.

Of Contracts and Bargains made, and other things done Beyond the Seas. *And whether the Cognizance thereof doth belong to the Admiralty.*

IF the Juriſdiction of the Admiralty in this point ſhould ſeem to be pretermitted or waved, by ſaying that Bargains and Contracts made beyond the Seas (wherein the Common

Common Law cannot administer Justice) do belong to the Lord High Constable and Earl Marshal of *England*, It might seem tacitely to imply, as if Charter-parties, Bills of Lading, Cockets, Invoyces, Commissions of Mart, Marine Consortships, and other Contracts or things made or done beyond Sea touching Trade and Navigation, were not within the Conusance of the Jurisdiction of the High Admiralty of *England*. Whereas it is well known, That they are only Contracts and Deeds of Arms, and of War, and the like, out of the Realm, that do properly belong to the Lord High Constable and Earl Marshal of *England*, and the like within the Realm; whose Jurisdiction is of a distinct and diversified nature, both from that of the Common Law and of the Admiralty also. It is said, [o] *That if an Indenture, Bond, or other Specialty, or any Contract be made beyond Sea, for the doing of any Act or payment of mony within the Realm, or otherwise, wherein the Common Law can administer Justice, and give ordinary remedy; In these Cases neither the Constable and Marshal, nor the Court of Admiralty hath any Jurisdiction.* So that the Admiralty seems hereby to be of little use as to Contracts though *Ultra-marine*. But the Lord *Hobard* in *Bridgmans* Case goes farther, and says, [p] *That it hath been often Resolved, That if any Obligation were made* at Sea, *yet it could not be sued in the Admiralty Court, because it is an Ob-*

o] *Coke* Inst. par. 4. c. 22.

p] *Hob.* Rep. in *Bridgmans* Case.

ligation which takes his course, and binds according to the Common Law. So that it hence follows, that if it be made *beyond Sea*, wherein the Common Law can administer Justice, the Court of Admiralty hath not any Jurisdiction; And if it be made *at Sea*, it cannot be sued in the Admiralty Court, because it takes its course, and binds according to the Common Law. Thus betwixt Land and Water, between Contracts made *beyond Sea*, and Obligations made *at Sea*, the Admiralty seems like a kind of Derelict. But probably it is not hereby meant or intended that every Contract made beyond Sea shall be tryed at the Common Law, but only such as are there made for doing some Act within the Realm, or otherwise, wherein the Common Law can administer Justice, and give ordinary remedy; Nor every thing done *at Sea*, but only Obligations, which have their course, and bind according to the Common Law, and also when these things done *at Sea*, be not (as *Bridgmans* Case farther puts it) of the same nature and respect, that is, (as the said Case explains it) an Obligation made *at Sea* for security of a debt growing before *at Land*, cannot be sued in the Court of Admiralty, because it is not for a Marine cause. No man, 'tis presumed, doth question but there may be debts growing at Land for Marine Causes, as in respect of Shipping, Navigation, and the like. Otherwise a Skipper signing Bills of Lading at Land, might pretend

tend such Bills of Lading so signed by him did not oblige him to a delivery of the goods therein expressed according to the consignation thereof. A Marine Contract may be made, and a Nautical debt contracted as well by Land as by Sea, for security whereof Obligation may be afterwards made at or beyond the Sea, and be within the Cognizance of the Jurisdiction of the Admiralty; which would not signifie much in this or any Nation, if it could not administer Justice in any Cases save only such as have their Birth, Life and Death, their foundation, negotiation, and consummation precisely *Super altum mare*; specially where a surmize or suggestion may be material *quoad examen*, though the Case oft times happens to prove otherwise, *quoad meritа*. Sir *George Croke* in the foresaid Resolutions upon the Cases of Admiral Jurisdiction, [q] seems to be of another opinion, where it is said, *That if a Suit be commenced in the Court of Admiralty upon Contracts made or other things done beyond the Seas, or upon the Seas, no Prohibition to be granted or awarded. There* respect seems to be had more to the Place where the Contract is made, then whether it be for a Marine cause; There are some things that wherever they be made or done (whether this side the Sea, upon the Sea, or beyond the Sea) may be properly Cognizable in the Admiralty; Such are Charter-parties, Bills of Lading, and the like; There are other things wherein

[q] *Croke* Rep. Hil. 8 Char.

the Jurisdiction of the Admiralty is limited as to the *Locallity* upon or beyond the Sea; *Personal* Actions may sometimes be or not be of Admiral Cognizance, according as they are here or there *Local*, at other times they are regulated *quoad subjectam materiam*, about which they are conversant; for as there are some certain *Places* that *sui natura* are subject to the Jurisdiction of the Admiralty, so there are some certain *Things* that are likewise *sui natura*, subject to the same Jurisdiction; And as a *Maritime Place* may without respect to the *subject matter* entitle that Jurisdiction to a Cognoshibility of a Case; so sometimes the *subject matter* as the said *Charter-parties*, *Bills of Lading*, and such like, may without such absolute respect had to the *Place*, have the same operation; were it otherwise, it might be something difficult to find a Case simply and absolutely of an Admiral Cognizance; for Contracts though made even *upon* or *beyond* the Seas, are generally to take effect *at Land*; And that which is purely *Marine* in the *Cause*, may be *Terrene* in the *Effect*; Bills of Lading, that are so properly inherent in the Admiralty, take *effect at Land*, though made and firm'd a ship-board for the most part, upon or beyond the Seas; Likewise Contracts for Fraight and Mariners wages, take effect at Land; yet for the most part are made a ship-board upon or beyond the Seas. These Obligations (for they are Obligations) though they are for

doing

doing ſome Act within the Realm, as in Bills of Lading for the ſafe delivery a ſhore (the dangers of the Sea excepted) of ſuch goods to the Conſignatory as are therein mentioned; and in Contracts of Fraight and Mariners wages for the due payment of mony on the Land, yet are all within the Juriſdiction of the Admiralty. When a Contract is really made *Super altum mare vel ultra quatuor maria*, ſpecially in matters *ſui natura* maritime, though in order to ſomething afterwards to be done or performed in whole or in part upon the Land; This ſeems by the Ancient Cuſtomes, ſtyle and practice of the Admiralty to be within the Juriſdiction thereof; yea, properly and excluſively, unleſs you hold the doctrine of *Univerſal Concurrency*. And herein the Admiralty may ſafely appeal to the words of that great *Oracle* of the Law, whereof mention hath been made in the precedent Chapter, [r] viz. *Que choſe fait hors del Royalme n' aient poet eſtre trie diens Le Royalme per Le ſerement de* 12. A thing done out of the Realm may not be tryed within the Realm by the oath of twelve men. This is the judgement of him whom the Lord *Coke* ſtyles not only by the name of a Lawyer, but of the Law it ſelf.

r] *Littlet.* l. 3. c. 7. ſect. 440.

No ſurmize or ſuggeſtion can cauſe that to be, which in *ſui natura* is not, nor cauſe that legally to ſeem to be, which *in rerum natura* is not capable of being. The *Queſtion*

is not whether an Alien born out of the Dominions of the Realm of *England* may as a Demandant bring his real Action; nor is it imagined by any, that because he is an Alien, that therefore his Case may not come to Tryal for want of a suggestion; To feign a Native of *France* to be born in such a certain place in *England*, doth not reach the Case in hand; For though it be impossible for one and the same individual person to be born in both places, yet it is not impossible but that he who is surmized or suggested to be born in one place, might in truth be born in another; nor contrary to the Rules of Law to surmize a translocation of a mans Nativity, which admits a possibility in any place within the habitable parts of the whole Universe; therefore such a surmize or suggestion may be regularly consistent with the Law of *Fictions*, and consequently practicable for the foundation of Process, Action, or Judicial Proceedings; But it may be otherwise of certain *Things*, which if you assay by a surmize to remove from their proper element, you may seem as it were to annihilate the thing it self. Or endeavouring a representation of such non-entities by a meer conception of words, you may seem as it were to attempt incapabilities, which the Law understands not, or no other then the ebolitions of fancy; for *ex nihilo nihil fit*. Nor is it controverted whether a Delinquent for adherency with the Kings Enemies beyond Sea, shall be

tryed

tryed in *England*; no question but such adherency without the Kingdome (to accommodate the matter for Tryal somewhere, and to prevent a total failure of Justice) may according to Law be alledged to have been made in some place within the Kingdome; because a Fact of that kind is within the Notion of Nature and Reason capable of a being in either; But it does not thence follow, that the Collision of one Ship against another by the violence of Wind and Tide, being and capable of happening where *Terra firma* is not, may according to Rules of Law be supposed to have happened in the *Ward* of *Cheap*, when possibly or in truth the said casualty did happen *Super altum mare*, it may be sixty Leagues Westward of the *Cassiterides*, or Isles of *Scilly*; And this not to much to accommodate the matter for a Tryal at Law somewhere for prevention of a total failure of Justice, as in the former cases; as to remove a Tryal, already in being, from one Jurisdiction to another, *& lite pendente ad aliud examen*. There is a double difference and of wide dimensions between the said instances and the true state of the Case in hand. First, that way of arguing holds well and rationally to create a Tryal in case of Necessity, where otherwise Justice might totally fail for want of a competent Tribunal in order thereto; And here there is no opponent, for the objection is of another nature, as when surmizes and suggestions are used as a remedy extraor-

extraordinary, where the ordinary means fail not, and that not ſo much to beget a Tryal which otherwiſe could have no being, as to remove a Tryal actually in being. Secondly, there is a vaſt difference in Law between *Perſons* and *Things*, in reference to Legal *Fictions*, as to their operation in Judicial Proceedings; For *Perſons* in one place will without offence to the Law admit of *Fictions* to ſuppoſe them in any place; but *Things* and *Actions* are ever to be accommodated as unto a *poſſibility* in *Nature*, ſo to *Rationality* and *Equity* in *Act*; Inſomuch that if by any manner of *ſuppoſing* they happen to be ſtrain'd beyond either of theſe, all the Superſtructure may fall for want of ſufficient foundation. Though it be very true what *Spiegelius* once ſaid, *Fingi Lites poterunt, ut tranſactio fiat citra Prætoris authoritatem*, yet moſt apt and true alſo is that of *Ulpian*, [s] *Fictio privata & illicita nihil diſtat à fraudulenta ſimulatione*; The Reaſon in Law is, becauſe as all Legal Fictions muſt ever imitate Nature it ſelf *in re poſſibili*, though it be *adverſus veritatem*: ſo it muſt alſo be *Legis ex juſta cauſa diſpoſitio*.

s] L. cum hi § ſi cum lis. D. de tranſact.

It is ſaid, [t] *That an Obligation made beyond the Seas, may be ſued in what place in* England *the Plaintiff pleaſe*; *Inſomuch that notwithſtanding it bear date at* Burdeaux *in* France, *yet it may be alledged to be made* in quodam loco vocat' Burdeaux *in* France *in* Iſlington *in the County of* Middleſex, *and there*

t] Coke par. 1. Inſtit. l. 3. c. 7. ſect. 440.

there it shall be tryed; For, (as it is there farther added) *in that case it is not traversable whether there be such a place in* Islington *or no.* But yet the Renowned *Littleton* says plainly, as is before observed, *That a thing done out of the Realm may not be tryed within the Realm by the Oath of twelve men.* [*u*] If an Obligation made beyond the Seas, may be sued here in *England*, in whatsoever place the Plaintiff please, admitting the intraversability of the place, it follows, That a thing done at *Burdeaux* in *France* may be tryed in *Middlesex* in *England*, and that which was done in the *East-Indies* may be tryed in the *Ward* of *Cheap*. If it be admitted that the words of the incomparable *Littleton*, viz. [*Out of the Realm*] And the words of the Lord *Coke*, viz. [*Beyond the Seas*] do according to the intendment here agree in parity of sense, though in other Cases very distinguishable, then it would seem as if there were some need of a person dexterous at *Gordian* knots in this point, that may not *Alexander*-like cut instead of untying the same; who withal must remember what the Lord *Coke* himself there says in the close of that *Burdeaux* Case in *Islington*, viz. *That these Points are necessary*

[*u*] *Littl.* l. 3. c. 7. sect. 440.

Brownl. Rep. 2. *Admiral Court*, ibi in hæc verba. *Note* (says the Report) *that it was urged by* Haughton, *that the intent of the Statute of* 13 R. 2. cap. 5. *was not to inhibit the Admiral Court, to hold Plea of any thing made beyond Sea, but only of things made within the Realm, which pertains to the Common Law, and is not in prejudice of the King or Common Law, if he hold Plea over the Sea; and that this was the intent of the Statute, appears by the Preamble.*

necessary to be known in respect of the variety of opinions in our Books; whereby it is evident, that there is not that universal unanimity of consent in this point, as to render it indubitable; So that although a surmize or suggestion should translocate *Burdeaux* into *Islington*, yet 'tis not to be gain-said but that the great Oracle of the Law asserts, That *Things done without the Realm cannot be tryed within the Realm by the Oath of twelve men*. Where the Locality is meerly Circumstantial to the Fact, and not withal Essential to a Jurisdiction, in that case the intraversability of the Place need not be so considerable, as when a Right of Cognizance admits dispute by reason of such *Locality*, or the claim of another Jurisdiction not inadmissable, specially of such a Jurisdiction as mainly calculates her Cognizance according to the *Meridian* of that *Place*, where the Thing or ground of Action received its Origination, and where the very *Locality* becomes as it were one Essential to the Jurisdiction it self, and where by such an intraversability of the Place, though only surmized, it becomes not impossible but that a competent Jurisdiction may happen to be *quoad hoc* excluded.

The Jurisdiction of the Admiralty having ever been of the complaining hand touching the inconveniencies through uncertainty of Jurisdiction as to the Cognizance and Tryal of Causes Maritime, may aptly say with the Lord *Coke*, [w] *Misera est Ser-*

[w] *Coke* par. 4. Instit. c. 74.

vitus

virtus ubi jus est vagum, aut incognitum. It hath been said, [x] *That if an Indenture, Bond, or other Specialty, or any Contract be made beyond the Sea, for the doing of any Act or payment of any money within the Realm, That in such Cases the Court of Admiralty hath not any Jurisdiction; And that therefore Prohibitions have been granted, as by Law they ought, when the Court of Admiralty hath dealt therewith in derogation of the Common Law.* If Instances of awarding Prohibitions should amount to a general Rule without Exception, the Admiralty would seem to have made in former times many frivolous complaints; it is presumed all men will not deny, but that it is possible for a Transmarine Contract to be a Maritime Contract; if so, then possibly the Admiralty may seem to deal therewith not in derogation to the Common Law, specially *if Things done without the Realm may not be tryed within the Realm by the Oath of twelve men.* That no Maritime Contract shall be tryed elsewhere then in the Court of Admiralty, appears plainly by the Sea-Laws, by the Customes of the Admiralty, and by the Act made at *Hastings* by King *Edward* the *First*. [y] For Maritime Contracts may be made as well beyond the Seas, as at Sea; And the performance of something *ex post facto* within the Realm, in pursuance of a precedent Contract made beyond Sea, not altering the Maritime quality of the Original Fact, doth not

x] Coke ibid. cap. 12.

y] Cod. Ms. de Adm. Angl. Vulgo Vocat. Lib. Nig. Admin fo. 25.

not seem to make it cease being Maritime, nor render that incapable of continuing Maritime, which was of a Maritime Nativity.

Justice *Croke* in the Resolution upon the Cases of Admiral Jurisdiction, subscribed 4 *Febr.* 1632. by all the Reverend Judges of both the Honourable Benches, Reports, [z] *That if there be a Suit commenced in the Admiralty for Fraight or Mariners wages, or for breach of Charter-parties, though the Charter-party happen to be made within the Realm, so as the penalty be not demanded, A Prohibition is not to be granted.* Much less then, if the Charter-party happen to be made without the Realm. Such Charter-parties, as also Bills of Lading, and the like, are Contracts frequently made beyond Sea for the delivery of goods to whom they are consigned within the Realm; if the Admiral Cognizance of such Transmarine Contracts be in derogation of the Common Law, then it should seem as if Things done out of the Realm might be tryable within the Realm by the Oath of twelve men; in variation from the precedent assertion of the Renowned *Littleton*. The Concessions of the said Reverend Judges in *Anno* 1632. seem not so much by way of enlargement as in affirmance of the Admiral Jurisdiction, for prevention of future uncertainties in point of Jurisdictions. In the Case of *Don Diego Serviento de Acuna*, Ambassador Lieger for the King of *Spain*, against *Jolliff* and *Tucker*, [a] It was

[z] Hill. 8 Char.

[a] *Rob. Rep. Case of* Don Diego Serviento de Acuna, *against* Jolliff *and* Tucker.

was ſaid, *That when the Caſe is laid at* Land, *no man may by a new-found form of Suit draw it* ad aliud Examen, *but he muſt ſubmit his forms to the Law, and not* è Contra. If this be the Law, which no man queſtions, as being viſibly founded upon good Reaſon, it follows, That when the Caſe is laid *at Sea*, no man ſhould by a new-found form of Suit draw it *ad aliud examen*; For Surmizes and Suggeſtions or Suppoſitions will admit of any forms, and aſſume what ſhape you pleaſe, ſo may not Suits and Actions; This would ſeem rather to proſtitute the Law to forms, then to ſubmit the forms to the Law.

Remarkable is the Caſe of *Palmer* againſt *Pope*. [*b*] The Caſe was this; Pope *agreed with* Palmer Super altum mare, *to tranſport him certain Sugars; This Agreement was afterwards put in writing in the Port of* Gado *on the Coaſt of* Barbary; *The Sugars happened to be ſpoyled at Sea by Salt water; For which* Palmer *ſues* Pope *in the Admiralty; For that the Original Contract and the Breach alſo were both* Super altum mare; *yet upon a Suggeſtion that the Charter-party was made in the Port of* Gado, *upon the Continent of* Barbary; *it was reſolved, that a Prohibition lay, becauſe the Original Contract, though it were made at Sea, yet was changed when it was put into writing Sealed, which being at Land changed the Juriſdiction as to that point.* This was the Caſe, and this the Reſolution thereupon.

[*b*] *Hob. Rep. Mich. 9 Jac. Caſe* Palmer *againſt* Pope.

upon. It is here ſaid, that the Original Contract and the Breach thereof were both *Super altum mare*. But it is ſaid withal, That upon a Suggeſtion of the Charter-parties being made in the Port of *Gado*, upon the Continent of *Barbary*, the Contract originally made at Sea was changed by being afterwards put into writing ſealed at Land, whereby the Juriſdiction was alſo changed. It doth not appear that there was any variation, as to the ſubſtance of the Agreement, in the writing ſealed (as ſuppoſed) at Land, from the Contract originally made at Sea; nor any alteration, as to Circumſtance, other then that of Locality where the writing was ſealed, containing that Contract or Agreement which was *bonæ fidei Contractus*, and therefore good and valid amoog Merchants without any writing at all, whether ſealed or not. The Charter-party is ſuggeſted to be made in the Port of *Gado*, upon the Continent of *Barbary*; in a Port upon a Continent; by a Continent is meant *terra firma*; and a Port or *Portus*, *eſt locus concluſus quo importantur & exportantur merces.* [c] A Veſſel deſigned for the Port of *London* is intended for the River of *Thames*; A Port is Navigable, a Port-Town is upon the Continent; A Charter-party made

c] L. 59. D. de Verb. Sig. Thameſim, Ptolemæus Jamiſſam, Dio Himenſum, Vocat.

Moriſot. lib. 1. cap. 36. *Port-Town*] *The Lord* Coke *in* par. 4. Inſtit. cap. 22. *in his Anſw. there to the fourth Objection, makes mention thereof by the name of Port-Town, as* infra Corpus Comitatus. *The Port of* Gado *is part of the Sea, the Port-Town of* Gado *is upon the Continent of* Barbary.

made in *London*, is made upon the Continent of *England*; A Charter-party made in the Port of *London*, is made upon the River of *Thames*; The said Original Contract was upon the Sea; the Breach thereof was also upon the Sea; the Concurrence of which two makes the cause of the Suit entire, as in the said Case more at large; And the suggestion it self lays the Charter-party to be made in the Port, which Nature hath adapted for Importation and Exportation. It was in that Case agreed, that if it had been a writing only without seal, it had wrought no change of the Contract, and consequently no change of the Jurisdiction. Put the Case, the like Contract or Agreement had originally been made at Land, afterwards put into writing sealed at Sea; the Question is, whether the Contract be changed, and with that change another change in consequence thereof. Seals may be Essential to Deeds, being but as Embrio's till thereby animated,

An Testamentum factum in Portu cujusdam Civitatis *Soldani*, dicatur factum in Terris-*Soldani*. Bald. in Rub. D. de Rer. Divis. in 6. Col. in prin. dicit, quod tempore suo hoc fuit revocatum in dubium, & Dicatur, Quod Non, Quia Portus est Publicus, & ita *Christianorum*, sicut *Sarecenorum*. Nam hoc est introductum *Jure Gentium*, vid. Barth. Cepol. de Servit. Rust. Præd. cap. 28. De Portu. nu. 1. *Which could not be affirmed of a Port-Town; this plainly shews a wide difference between a Port and a Port-Town, and proves* Portus *to be* Locus Publicus, uti Pars Oceani. *Yet in the Case of* Don Diego Serviento de Acuna, *against* Jolliff *and* Tucker *in* Hob. *Rep. It is said, That no Port is part of the Sea, but of the Continent. So says that Report. But may we not distinguish between* Portum Naturalem & Portum Artificialem. Portum Naturalem λιμὴν, manu & artificio factun ὅρμον, καὶ μώθων, Græci vocant.

Morisot. Histor. Orb. Marit. lib. 1. cap. 24.

and as abortive till by the obſtetricy of witneſſes well delivered; But Bargains, Contracts, and Agreements among Merchants and Mariners, proceeding only *Secundum æquum & bonum*, and being Contracts *bonæ fidei*, do oblige *ultro citroque* without any Seal to the ſame; And ſuch made at Sea though but parole, are with Merchants and Mariners as valid, as if in writing ſealed at Land; And this is conſonant to that Law which is moſt converſant in ſuch Affairs. A Seal (as aforeſaid) may be Eſſential to a Deed, or the like Inſtrument, ſo is the place of making a Contract or Agreement Eſſential *ſuo genere*, to the Admiral in point of Cognizance; which in effect is not denyed in the Report of that Caſe between *Palmer* and *Pope*, where it is ſaid, *That the Jurisdiction of the Admiralty groweth not from the* Cauſe *(as of Tithes and Teſtaments in the Spiritual Courts) but from the* Place; yet this may not be underſtood excluſively to ſuch things as are properly Maritime, and conſequently within the Cognizance and Juriſdiction of the Admiralty, ſuch as Reprizals, Derelicts, matters touching Navigation, Charter-parties, Bills of Lading, Mariners wages, and the like, whereof you have a Summary enumeration in the Fourth Chapter of this Treatiſe, to which the Reader is referred. A Surmize or Suggeſtion in certain Caſes is doubtleſs a very Legal Expedient; yet poſſibly ſome men will no more agree with others

others of their fellow-rationals in ſuggeſting a Contract to be made in the Port of *New-haven* upon the Continent of *France*, then if they ſurmiz'd it to be made in the *Bay of Biſcay*, upon the Continent of *Spain*.

To this purpoſe very memorable is that fore-mentioned Caſe of *Suſans* againſt *Turner*, [d] where it is ſaid, *That if a Suit be commenced in the Court of Admiralty for a Contract ſuppoſed to be made* Super altum mare, *the Defendant upon a Surmize or Suggeſtion that it was made upon the Land, within the Realm, may have a Prohibition.* The Fact is *re vera ſuper altum mare*; notwithſtanding which, the Juriſdiction of the high Admiralty of *England* ſeems, as that Caſe puts it, to be in point of Cognizance ſubordinated to a bare ſurmize or ſuggeſtion, though *in re minus vera*. In matters of an inferiour alloy it is no ſuperlative argument to infer, a thing ought to be ſo, becauſe it hath been ſo, much leſs in point of Juriſdiction. Though it be a common Rule in Law, that *ex facto jus oritur*, yet this is ever to be underſtood *non de facto ſuppoſito, ſed vero*.

d] *Noys* Rep. M. 39, 40 El. Caſe, Suſans *againſt* Turner.

A Surmize at Common Law may be as Legally qualified to call the Right of Cognizance into queſtion, as an Allegation at the Civil Law to lay a foundation for a Definitive Sentence, and poſſibly in a Caſe whereof it hath no right to determine; For neither a Surmize in the one, nor an Allegation in the other, are more then ſuppoſitions, till realized by proof.

It is yet too freſh in memory to eſcape obſervation, how of late unhappy years Prohibition have been prayed, even by ſuch

as in the ſelf-ſame Caſe had before admitted the Juriſdiction of the Admiralty, by pleading there; yea, when by the Libel it could not appear that the Contract, whereon the Action was grounded, was made out of that Juriſdiction; Inſomuch as it became moſt mens policy that ſuſpected the ſucceſs of their Cauſe in one Juriſdiction, to endevour by the art of ſurmizing the removal thereof to another; And this though the Caſe in it ſelf never ſo clear of Admiral Cognizance, and after themſeves had ſubmitted to the Juriſdiction. This had but a ſlender affinity with what is reported in the Caſe between *Jennings* and *Audley*, [e] where *Prohibition was prayed to the Admiral, and the Libel ſhewed to the Court, which contained the Contract was made in the* Straights *of* Malago, *within the Juriſdiction of the Admiralty, and doth not ſay*, upon the deep Sea. And it was agreed, *That in all Caſes where the Defendant admits the Juriſdiction of the Admiral-Court, by Pleading there, Prohibition ſhall not be granted, if it do not appear by the Libel that the Act was done out of their Juriſdiction.* The like we find in the Caſe of *Baxter* againſt *Hopes*. [f] In which it is ſaid, *That if the Defendant admits the Juriſdiction of the Court, then the Court will not upon a bare ſurmize grant a Prohibition, after the admittance of the party himſelf, if it be not in a thing which appeareth within the Libel, that is, that the Act was not made within the Juriſdiction of the*

[e] *Brownl.* Rep. part. 2. in Caſ. Jennings *againſt* Audley, Mich. 1611. 9 Jac. in Com. Ban.

[f] *Brownl.* Rep. part. 2. ibid. in Caſ. Baxter *againſt* Hopes.

the Sea; And to this difference all the Court agreed. So that for the ſame party in the ſame cauſe to ſurmize and move for a Prohibition againſt that Juriſdiction, to which himſelf had formerly ſubmitted, and in a Cauſe which by the Libel appears not other then Maritime, ſeems quite beſide the Rule and Practice of Law.

To conclude this point of Forraign Contracts made, and other things done *beyond the Seas*, The Merchants Caſe, *Mich.* 8 *Jac.* in the Kings Bench, [g] may not be omitted. It is therein thus reported, *viz.* Henry Yelverton *moved the Court for a Prohibition to the Admiralty Court*: And the Caſe was, *There was a Bargain made between two Merchants in* France, *and for non-performance of this Bargain, one Libelled againſt the other in the Admiralty Court. And upon the Libel it appeared, that the Bargain was made in* Marcelleis *in* France, *and ſo not upon the deep Sea, and by conſequence the Court of Admiralty had nothing to do with it*; And Flemming Chief Juſtice *would not grant a Prohibition*; *for though the Court of Admiralty hath nothing to do with this matter, yet inſomuch as this Court cannot hold Plea of that (the Contract being made in* France) *no Prohibition*; *but* Yelverton *and* Williams, Juſtices, *to the contrary*; *for the Bargain may be ſuppoſed to be made at* Marcelleis *in* Kent, *or* Norfolk, *or other County within* England, *and ſo tryable before us*; *and it was ſaid, that there were*

[g] Brownl. *Rep.* par. 2. Mich. 8. Jac. in Ban. Reg.

many Presidents to that purpose, and day given to search for them. This was the Case, wherein it appears the Bargain was made beyond the Seas, and between Merchants, yet said the Admiralty hath nothing to do therewith, because not upon the deep Sea; nor that Court hold Plea thereof, because made in *France*, therefore according to *Flemming*, *Chief Justice*, no Prohibition; but *Yelverton* and *Williams*, *Justices*, to the contrary, the Contract being supposable to be made at *Marcelleis* in *Kent* or *Norfolk*; Therefore a search for Presidents of Contracts, though really made beyond Sea, yet supposed to be made in some Forraign parts beyond Sea in *England*, as *Marcelleis* in *Kent* or *Norfolk*, or the like. This could not be so much out of any necessitous ground to accommodate the matter to a tryal somewhere for prevention of a total failure of Justice, as in order to a removal thereof from the Court of Admiralty, where it actually depended. It is now nigh thirty years since in the Royal Presence it was unanimously resolved and subscribed by all the Reverend Judges of both the Honourable Benches, *viz. Febr.* 1632. upon the Cases of the Admiralty-Jurisdiction, [*b*] That if a Suit be commenced in the Court of Admiralty upon Contracts, or other things done beyond the Seas, no Prohibition is to be awarded.

[*b*] Croke *Rep.* Hil. 8 Char.

CHAP.

CHAP. X.

of Judicial Recognizances *and* Stipulations *for Appearance, and performance of the Acts, Orders, Judgments, and Decrees of the Court of Admiralty; As alſo whether the ſaid high Court of Admiralty of* England *be a Court of Record.*

ALthough the Court of Admiralty time out of mind hath ever uſed to take ſuch Recognizances and Stipulations for Judicial Appearances, and due performance of ſuch Acts, Orders, and Judgments, as are made and given in the ſaid Court; yet this Ancient Practice of the Admiralty, though ſo adequate to the genuine rights of Judicatories and Tribunals of Juſtice, *quatenus*; ſuch, hath not eſcaped a Contradiction founded upon this aſſertion, That the Court of Admiralty is no Court of Record.

Such as hold Prohibitions may be granted to the Court of Admiralty upon the ground or reaſon aforeſaid, ſeem to model the Argument Syllogiſtically, and ſay, That for the taking of Recognizances againſt the Laws of this Realm, Prohibitions have been and ought to be granted: But the Court of Admiralty doth take Recognizances

againſt the Laws of this Realm, *Ergo*, &c. The *Minor* Propoſition is ſaid to be proved thus, *viz.* No Court being not a Court of Record, can take ſuch Recognizances: But the Court of Admiralty is no Court of Record; *Ergo*, &c. That unhappy *Minor* is ſaid to be a Truth, how fatal ſoever, built upon this double foundation: Firſt, becauſe the Court of Admiralty proceeds by the Civil Law. Secondly, becauſe if an erroneous ſentence be given in that Court, no Writ of Errour, but an Appeal doth lye, according to the Statute of 8 *Eliz. cap.* 5. Reaſon is, or ſhould be the ſource or fountain of all humane Laws, no Waters riſe higher then their Springs; The firſt enquiry therefore will be, what a Court of Record is, or what Court may properly be ſaid to be a Court of Record; which being known and conſidered, if you be not then ſatisfied, you may, if you pleaſe, farther enquire, whether the being of Record be ſuch an eſſential qualification to a Court, as without which it is incapable of taking ſuch Stipulations (I ſay, ſuch Stipulations) as the Court of Admiralty hath ever uſed to take, and *de jure* ought to take.

[i] *Coke* on Littl. par. 1. Inſtit. lib. 2. cap. 11. ſect. 195.

The Lord *Coke* makes this deſcription of a Court of *Record*, [i] *Every Court of Record is the Kings Court, albeit another may have the profit; wherein if the Judges do erre, a Writ of Errour doth lye. But the County-Court, the Hundred-Court, the Court-Baron, and ſuch like, are no Courts of Record;*

cord; And therefore upon their Judgments a Writ of Errour lyeth not, but a Writ of falſe Judgment, for that they are no Courts of Record, becauſe they cannot hold plea of Debt or Treſpaſs if the debt or damage do amount to forty ſhillings, or of any Treſpaſs Vi & Armis. It is obſervable that it is here ſaid, that every Court of Record is the Kings Court; So is the high Court of Admiralty ſtyled the Kings Court, as appears not only by the Title or preliminary Deſcription, but alſo by the ſecond Article or Propoſition in the Reſolutions upon the Caſes of Admiral Juriſdiction, [k] ſubſcribed in *Anno* 1632. by the Reverend Judges in Preſence of His Late Majeſty of ever Bleſſed Memory, and the Lords of His Majeſties moſt Honourable Privy Councel. And whereas in the ſaid deſcription of a Court of Record, it is ſaid, They are no Courts of Record, becauſe they cannot hold Plea of Debt or Treſpaſs, if the debt or damage do amount to forty ſhillings, or of any Treſpaſs *Vi & Armis*, it is well known that the Court of Admiralty can hold Plea of a Debt or Treſpaſs Maritime if the debt or damage do amount to as many thouſands of pounds as there are pence in forty ſhillings, and not only of Treſpaſs *Vi & Armis*, but alſo of *Maihem*, yea, of Death it ſelf. [l] Wherefore, as the former character of a Courts being of Record, may be applyed to the high Court of Admiralty as the Kings Court: So the other character

Mr. Seld. in ſuo Mar. Clauſ. l. 2. cap. 22. *ſtyles the Judge of the Admiralty*, Summæ curiæ Regiæ Admiralitatis Judicem.

k] Hil. 8 Char. 4. Febr. 1632.

l] Stat. 15 R. 2. cap. 3.

of

of a Courts not being of Record, is no way applicable to the said Court of Admiralty. But in the said description of a Court of Record, it is said, that every Court of Record is the Kings Court, wherein, if the Judges do erre, a Writ of Errour doth lye; the question then is, whether it be a question whether a Writ of Errour doth lye in the Consistory Court of the University of *Cambridge*, which Queen *Elizabeth* by her Charter dated 26 *April*, *Anno* 3 *Reg.* made a Court of Record. [*m*] And Writs of Errour did also properly lye in any Court where they have power to hold Plea by the Kings Charter, or by Prescription in any summe, either in Debt or Trespass above the summe of forty shillings. [*n*] In which sense the Court of Admiralty as aforesaid, is sufficiently qualified as a Court of Record; which though eminent enough for its practice and interest in the Realm, and so not probable to have escaped a particularization among the other fore-mentioned Courts, the County-Court, Hundred-Court, and Court-Baron, as no Courts of Record, by reason of any oblivion, yet is not there instanced among those other Courts not of Record. And the County is called a Court of Record. *Westm.2.cap.* 3. *Anno* 13 *Ed.*1. But it seems by *Britton*, *cap.*27. that it is only in these causes, whereof the Sheriff holdeth Plea by special Writ, and not those that are holden of course or custome. [*o*] And whereas *Brook* seemeth to say, That no

[*m*] Cowels *Interpreter*, verb. Record.

[*n*] Fitzh. N. B. *Writ of Errour.*

[*o*] Cowel, ubi supra.

no Court Eccleſiaſtical is of Record; [p] yet Biſhops certifying Baſtardy, Bigamy, Excommunication, the vacancy or plenarty of a Church, a Marriage, a Divorce, a Spiritual intruſion, and the like, are credited without farther enquiry or controlment. [q] This only by the way, and *in tranſitu*. If it be ſaid, the Court of Admiralty is no Court of Record, becauſe it proceeds by the Civil Law, it may be demanded by what Law the Conſiſtory-Court of *Cambridge* proceeds, which Q. *Elizabeth* (as aforeſaid) made by her Charter a Court of Record; For the King may make a Court of Record by his Grant; [r] which ſeems to allay that Antipathy that is ſuppoſed between a Court of Record and a Court proceeding by the Civil Law, a Law allowed, received, and owned as the Law of the Admiralty of *England*. Yet Serjeant *Harris* in the Caſe of *Record* againſt *Jobſon*, argued, *That a Recognizance taken in the Court of Admiralty to ſtand to the Order of the Court, is void, and that it hath been ſo adjudged.* [s] So it's argued; it is not ſaid, Reſolved. It is a happineſs as well as a truth, what was once ſaid in Dr. *James* his Caſe, [t] *That the King is the indifferent Arbitrator in all Jurisdictions, and of all*

p] Brook tit. Record.

q] *Cowel*, ubi ſupra. Ubi Brook tit. *Baſtardy*. Fleta li. 6. cap. 39, 40, 41, 42. Lamb. Eirenarcha, lib. 1. cap. 13. & Glanvile, lib. 7. cap. 14, 15. *The Regiſter* Orig. fol. 5. b. Bracton lib. 5. Tract. 5. cap. 20. nu. 5. Britton, cap. 92, 94, 106, 107, & 109. Doct. & Stud. lib. 2. cap. 5. & Cofins Apol. par. 1. cap. 2.

r] Glanvil, lib. 8. c. 8. Britton, cap. 121. & Cowel, verb. Record.

s] Noys *Rep. Caſ.* Record *againſt* Cornel. Jobſon.

t] Hob. *Rep. in Dr.* James *Caſe.*

all Controverſies touching the ſame, and that it is a Right of his Crown to diſtribute to them, that is, to declare their bounds. It is no novel doctrine to aſſert, that Stipulations taken in the high Court of Admiralty for appearance, or performance of its own Acts, Orders and Decrees, are *in modo procedendi quaſi Acceſſorium quoad Principale*; And the *Modern Reporter* in a Caſe depending before the Commiſſioners of *Enſurance* between *Oyles* and *Marſhal*, [u] ſays, *That it being moved in the Kings Bench for a Prohibition, and a Rule there given to ſhew cauſe why a Prohibition ſhould not be granted to the Court of* Enſurance; *it was then declared, That if they had Juriſdiction of the Principal matter, they had Juriſdiction of matters alſo incident thereto.* And what are Recognizances taken in the Court of Admiralty, for Appearance, and performance of its own Acts and Decrees, more then Stipulations *Judicio ſiſti & judicatum ſolvi?* Inſomuch as to deny the right or power of taking ſuch Stipulations, ſeems in effect as to imply an inhibition of the whole Juriſdiction; for without ſuch Stipulations *in præparatorio Litis*, the ſubſequent Judgement, be it for Plaintiff or Defendant, would prove but vain and eluſory; And a Judgement without due and effectual execution is *quaſi ſententia inanimata*; without ſuch ſtipulations Juſtice may be perverted into Injuſtice, for default of that which is the complement, or ultimate deſign of all Juſtice,

[u] Moder. Rep. Trin. 1654. in Banc. Reg.

ſtice, *viz. Facultas ſuum cuique tribuendi.*

The Practice of taking ſuch Stipulations for the Legality thereof according to that Law whereby that Court proceeds, is nothing inferiour in point of Antiquity to the Juriſdiction it ſelf, the ſtyle of that Court in that point of Practice being as Ancient as the Court it ſelf; And whereas the right of taking ſuch ſtipulations for Appearance, and performance of the Acts, Orders, Judgements and Decrees of the Court of Admiralty hath not been without contradiction upon the foreſaid ground; That the ſaid Court is no Court of Record, it doth plainly appear by a Record of good Antiquity, and with the Learned Mr. *Selden* of good Authority, That the ſaid Court is a Court of Record. [w] And if the Court of Admiralty be diſcharactered as no Court of Record, by reaſon of its proceeding by the Civil Law, it would thence ſeem to be implyed as if no part of the *Civil Law* were any part of the Law of *England*; It is not concealed from the world by a perſon of no leſs honour then knowledge in the Laws of this Realm, that the Imperial or Roman Law is in ſome caſes the Law of the Land. [x] This worthy Authour ſpeaking of the Right of Prerogative in abſolute Kings and Princes, as to Impoſitions upon Merchandizes, doth upon that occaſion in the fore-cited place declare himſelf *in hac verba. Foraſmuch as the general Law of Nations, which is and ought to be Law in*

w] Cod. Ms. de Adm. viz. Lib. Nig. Adm. fol. 19. & ibid. in Art. 39. Artic. Inquiſit. Adm. Citat. per D. *Seld.* in Suo Mare Clauſo, lib. 2. & c. 24.

x] Sir *Jo. Davies.* Jus imponendi Vectigalis, c. 6.

in all Kingdomes, and the Law-Merchant is alſo a branch of that Law, and likewiſe the Imperial and Roman Law have been ever admitted, had, received by the Kings and people of England, *in Cauſes concerning Merchants and Merchandizes*, and ſo are become the Laws of the Land in theſe Caſes; *why ſhould not this queſtion of Impoſitions be examined and decided by the Rules of thoſe Laws ſo far forth as the ſame doth concern Merchants and Merchandizes, as well as by the Rules of our Cuſtomary or Common Law of* England, *eſpecially becauſe the Rules of theſe other Laws are well known to the other Nations, with whom we have commerce, whereas the Rules of our own Municipal Laws are only known within our Iſlands.* What this worthy Authour here ſpeaks of the *Civil Law* in *England*, as to this point of Impoſitions by the King on Merchandizes, is applicable in any caſe of Navigation, Naval Negotiation, or other affairs properly relating to Merchants or Mariners within the ſphere of the Admiralty of *England*. And the ſame Learned Authour in another place, [y] *When the City of* Rome *was* Gentium Domina & Civitas illa magna quæ regnabat ſuper Reges terræ, *The* Roman *Civil Law being communicated unto all the Subjects of that Empire, became the* Common Law, *as it were, of the greateſt part of the inhabited world*, &c. And again in the ſame place, *All Marine and Sea-Cauſes which do ariſe for the moſt*

[y] Idém. Jus imp. Vect. c. 4.

part

part concerning Merchants and Merchandizes croſſing the Seas, our Kings have ever uſed the Roman *Civil Law for the deciding and determining thereof.* Thus far goes the ſaid worthy Authour in this point. It is moſt true, the Civil Law in *England* is not the Law of the Land, but the Law of the Sea; *Great Brittain*, and the Dominions thereof comprizing the adjacent Seas, as well as the Land; The Law by which the high Admiralty of *England* proceeds, being in all Cauſes cognizable in that Juriſdiction allowed, owned and received by Prince and People, Soveraign and Subject, ſeems to be a Law of *England*, though not *the* Law of *England*, not the *Land-Law*, but the *Sea-Law* of *England*; For as in matters Terrene and in Land-affairs *it is* proper to ſay *infra Corpus Comitatus*, ſo in matters Maritime and Sea-affairs it is no leſs proper to ſay *Sur le hout mere.* The Juriſdiction of the Admiralty of *England* is one of the Juriſdictions of *England*, which ever implyes a Law to proceed by that cannot be but of that Place whereof the Juriſdiction it ſelf is. It neither may, nor ought to be denyed, but that for the taking Recognizances againſt the Laws of the Realm, Prohibitions have been granted; yet poſſibly it may not thence by a neceſſary concludency follow that the high Court of Admiralty (in taking Stipulations for Judicial appearance, or performance of the Acts and Orders of the Court, *vel judicio ſiſti vel judi-*

catum

casum solvi, and this according to that Law whereby it is to proceed) is involved under such a guilt of transgression against the Laws of the Realm, as *eo nomine* to incur a Prohibition; which if grantable upon every such Recognizance or Stipulation for Appearance, and performance of the Acts and Judgements of the Court (without which it cannot proceed according to Law) there could then be no Suit or Action depending in the high Admiralty of *England*, be it for Place, Nature, or Quality in it self, never so Maritime and of undoubted Admiral Cognizance, but must be subject and lyable to a Prohibition, and consequently to a removal from its proper Jurisdiction *ad alind examen*, to the great grievance of Merchants and Mariners, and others the good people of these His Majesties Dominions, by reason of the multiplicity of Suits, protelation of Justice, excess of Judicial expences, together with the uncertainty of Jurisdictions, and all as the unavoydable consequences of such Prohibitions.

CHAP.

CHAP. XI.

Of Charter-parties made on the Land, and other things done beneath the firſt Bridge next to the Sea; vel intra fluxum & refluxum Maris; *and how far theſe may be ſaid to be Cognizable in the Admiralty.*

TOuching this Subject it hath been aſſerted, *That if a Charter-party be made within any City, Port-Town, or County of this Realm, although it be to be performed upon or beyond the Seas, yet is the ſame to be tryed and determined in the ordinary courſe of the Common Law, and not in the Court of Admiralty.* [a] This is excluſive as to the Admiralty in matters of Charter-parties made upon the Land; But yet it is agreed and reſolved, *Hill.* 8. *Car.* upon the Caſes of Admiral Juriſdiction, *That though the Charter-party happen to be made within the Realm, ſo as the penalty be not demanded; A Prohibition is not to be granted.* [b] Were it otherwiſe, or that the Juriſdiction of the Admiralty might not take Cognizance of ſuch Maritime Contracts though made on Land, then by thereunto adding what was formerly obſerved out of the ſame place, [c] viz.

a] Coke Part. 4. Inſtit. c. 22. in *the Anſw. to the fourth Objection.*

b] Croke *Rep.* Hill. 8. Car. *Reſolution upon the Caſes of Admiral Juriſdiction.*

c] Coke ibid. *in the Anſw. to the ſecond Objection.*

viz. *That the Court of Admiralty hath not any Jurisdiction of any Contracts made beyond Sea for doing of any act within this Realm, or otherwise, wherein the Common Law can administer Justice*; It would follow, that if (according to the one of these Assertions) such Maritime Contracts when made upon the Land, though to be performed upon or beyond the Seas, may not be tryed or determined in the Court of Admiralty; and when (according to the other of these Assertions) made beyond the Sea for doing of any act within this Realm, &c. the Court of Admiralty hath not any Jurisdiction thereof; In such case it must necessarily follow, that the Jurisdiction of the Admiralty (being thereby excluded the Cognizance of such Maritime Contracts both sides the water) must keep to Sea in all weathers, yet scarce retain the libert, (if I may so say) of a confinement *Super altum mare*, according to the energy of that suggestion reported in the Case aforesaid, of *Susans* against *Turner*; [*d*] where it is said, *That if a Suit be commenced in the Admiralty for a Contract supposed to be made* Super altum mare; *the Defendant upon a* Surmize *or* Suggestion, *That it was made upon the Land within the Realm, may have Prohibition.* According to which computation, with the premises considered, the Jurisdiction of the Admiralty

[*d*] Noy *Rep. in Cas.* Susans *against* Turner.

Q. *Whether in matters of dubious Jurisdiction, meerly depending upon future contingency of proof, a bare Surmize at Common Law, may not as rationally expect the relief of a Prohibition, as a naked allegation at Civil Law the countenance of a* Litis Contestation. *So that the Law is good, if it be used lawfully.*

miralty ſeems to be hard put to it both by Sea and Land; Nor need it ſeem any thing ſtrange that the Juriſdiction of the Admiralty ſeems excluded of Cognizance in ſuch caſes of Charter-parties, whether made at Land or beyond Sea, if a bare Surmize or Suggeſtion according to the ſaid Report in the Caſe of *Suſans* againſt *Turner*, may work as to a Prohibition againſt the Admiralty when a Suit is there commenced for a Contract not appearing other then made *Super altum mare*. According to theſe premiſes, if the Charter-party be made at Land, though to be performed upon or beyond the Seas, it is to be tryed in the ordinary courſe of the Common Law; And if the Contract be made beyond Sea, for doing any act within the Realm, &c. the Court of Admiralty hath not any Juriſdiction thereof; And if the Suit be commenced in the Admiralty for a Contract ſuppoſed to be made upon the Sea, then by a Surmize or Suggeſtion, that it was made upon the Land, a Prohibition (according to the ſaid Caſe) may be had. Thus in matters of Charter-party this ſide the Sea, the Common Law ſeems to claim the Cognizance; in Contracts made beyond Sea, the Admiralty ſeems not to be allowed any Juriſdiction; and in Contracts ſuppoſed to be made upon the Sea, the Defendant upon a Surmize may have a Prohibition; But no *Fiction* can ſponge the Ocean, nor turn the Sea into dry Land, or the Bay of *Mexico* into *Middleſex*, till it be proved as

well as ſurmized, In the ſaid Caſe of *Suſans* againſt *Turner*, where it is ſaid, If a Suit be in the Admiral Court, for a Contract ſuppoſed to be made *Super altum mare*, the Defendant upon a Surmize that it was made upon the Land within the Realm, may have a Prohibition. It is there farther added in theſe words, *viz. And that it may come in iſſue if it was upon the Land or upon the Sea. But by the Juſtices, their Rule is, that upon ſuch a Suggeſtion they ſhall not grant a Prohibition after Sentence paſs'd.* So that, be the verity of the Fact (as to the *Super altum mare*) in it ſelf never ſo liquid, yet being primarily but ſuppoſed (as all things *in judicio*, though in themſelves never ſo clear, never ſo true, yet muſt be alledged before the Court can proceed) a Counter-ſuppoſition or Croſs-ſurmize may work (according to this) as to a Prohibition, to bring it in iſſue whether it was upon the Land or upon the Sea; And ſo it ſeems as if ſcarce poſſible in any Caſe to avoid a Prohibition, for the realleſt Truths and the undenyableſt verities under the Sun, if *in judicio & fore contentioſo*, can be at firſt but ſuppoſed truths; for the Court, if it proceed Legally, cannot but proceed *Secundum allegata* firſt, *& Probata* next.

Therefore to prevent this Inconvenience, and obviate ſuch Objections as theſe; before any Prohibition doth actually iſſue upon ſuch Surmizes, the Courts of Weſtminſter *have ever uſed to prefix a day wherein to ſhew cauſe, if any, why a Prohibition ſhould not be granted. So that although there be a Surmize, yet there is no Surprize in the Caſe.*

Charter-parties, Bills of ſale of Ships, and the

the like Maritime Contracts are commonly made according to the Law of *Oleron*, and frequently with a clause express to that purpose inserted therein; the *Civil* Law, the Laws and Customes of the Sea, whereby the Admiralty proceeds, takes notice thereof, and can judge and determine accordingly; how far other Laws, that are accommodated to matters of another element, though in themselves and in their proper sphere most excellent, can do the like, is no part of the design of this compendious Treatise to determine. But that Prohibitions have been granted upon Charter-parties, is undenyably true. [e] Yea, the lamentable Cases of poor Mariners, for their Wages have not of late unhappy years escaped Prohibitions, although it be not denyed but they may all joyn in one Libel in the Court of Admiralty, whereas at the Common Law (if they must there prosecute) they may not bring their Actions otherwise then severally and apart, to their greater expence and charges, respect being not had to the identity of the Case, or the poverty of the Demandants, to introduce a joynt Action. To this purpose it is reported, [f] *That where judgement was given in the Court of Admiralty against one* Jones *a Master of a Ship at the Suit of certain poor Mariners for their wages, a Prohibition was prayed upon a Suggestion that the Contract was made at* London *in* England; *but the Prohibition was denyed, because he had not sued his Pro-*

[e] *Coke*, ubi supra. Mich. 31 El. 6. Rot. 315. in Banc. Hill. 2. Ph. & M. Rot. 130. Cr. Hil. 17 El. Rot. 410. Cr. *The Common Law in some Cases doth take notice of* Conjunct Personæ, *but not as does the Civil Law.*

[f] Winch *Rep. Easter Term*

hibition in due time, viz. *before a Judgement given in the Court of Admiralty*. Whereby it seems as if it was not the nature of the Case, though for Mariners wages, that prevented the Prohibition, but the unseasonable suing for it, *viz.* After Judgement given in the Court of Admiralty.

Touching the Jurisdiction of the Admiralty in Contracts made, and other things done upon the Rivers beneath the first Bridges next the Sea, where it ebbs and flows, and in the Ports, Creeks, Havens, Peers, Sounds, Harbours, Rhodes, Bayes, Channels, and other places *infra fluxum & refluxum maris*; It hath been asserted, [g] *That by the Laws of this Realm the Court of Admiralty hath no Cognizance, Power, or Jurisdiction of any matter within any County, either upon Land or Water; So as it is not held material, whether the place be upon the water*, infra fluxum & refluxum maris, *but whether it be upon any water within any County*; And it is farther added, [h] *That for the death of a man, and of Mayhem*, (in these two Cases only) *done in great Ships, being and hovering in the main stream only beneath the* Points *of the same Rivers, nigh to the Sea, and no other place of the same Rivers, nor in other Causes, but in these two only, the Admiral hath Cognizance*; yet probably it will not be denyed, but that by Exposition and Equity of the Statute of 15 *R.* 2. *cap.* 3. (whence, as supposed, that assertion is taken) he may inquire of and redress

[g] *Coke par.* 4. *Instit. c.* 22. *Answ. to the first Object.*

[h] *Ibid. Answ. to the sixth Object.*

dreſs all annoyances and obſtructions in thoſe Rivers, that are any impediment to Navigation or paſſage to or from the Sea: and alſo try all perſonal contracts and injuries done there which concern Navigation upon the Sea. And no Prohibition is to be granted in ſuch Caſes. [*i*] The Reader may at his leiſure conſult the ſaid Statute, whether it ſays, [*In the main ſtreams only beneath the* Points *of the ſame Rivers nigh to the Sea*] or whether the Statute doth not ſay, [*In the main ſtream of great Rivers, only beneath the* Bridge *of the ſame Rivers nigh to the Sea*] For the difference may be material. In the Caſe of *Palmer* againſt *Pope* it is reported, [*k*] That the Statute ſaith, *ad primos pontes.* And in the Caſe of *Leigh* and *Burley*, [*l*] It is ſaid, *that the* 15 *of* R. 2. *is miſ-printed*; viz. *that the Amiral ſhall have Juriſdiction to the Bridges: for the Tranſlator miſtook* Bridges *for* Points, *that is to ſay, the Lands end.* &c. reported in the ſaid Caſe. The words of the Statute are, *viz.* [*In the main ſtream of great Rivers, only beneath the, &c. of the ſame Rivers nigh to the Sea, and in no other places of the ſame Rivers the Admiral ſhall have cognizance*] It is not denyed by the Statute, but the Admiral hath Juriſdiction in Caſes of Mayhem and Death in the main ſtream of great Rivers; Rivers are not found beneath the Lands end; if *Bridges* be miſtaken by the Tranſlator for *Points*, and *Points* be taken for the *Lands end*, then *Rivers* and the

i] Croke *Rep.* Hil. 8 Car. *Reſolution upon the Caſes of Admiral Juriſdiction. Subſcribed* 4 Feb. 1632. *by all the Judges of both Benches.*

Beneath the Bridges] *So the Expoſ. Terms of the Law*, verb. *Admiral.*

k] Hob. *Rep. Caſe.* Palmer verſus Pope. Mich. 9 Jac.

l] Owen *Rep.* in caſu Leigh *againſt* Burley. Mich. 7 Jac.

main ſtream of great Rivers ſhould be beneath the *Lands end*, where they empty themſelves into the main Ocean. Again, the words of the Statute are, [*In the main ſtream of great Rivers only* beneath *the*, &c.] And the words in that Caſe of *Leigh* againſt *Burley* are, [*That the Admiral ſhall have Juriſdiction* to *the*, &c.] queſtion is, whether there alſo be a miſtake in the Tranſlation? For the difference is great and very ſignificant between *to* a place, and *beneath* a place. In the ſaid Caſe of *Leigh* againſt *Burley*, it is ſaid, *That the Statute of* 15 R. 2. *is miſ-printed*; yet probably the Preſs followed the Copy, and in ſo doing it may be excuſed from an errour of miſ-impreſſion; In the ſaid Caſe it is alſo ſaid, *That the Tranſlator miſtook Bridges for Points, that is to ſay, the Lands end*; A right impreſſion of a miſ-tranſlation (if any ſuch be) ſeems not to render the word *Bridges*, inſtead of *Points* or *Lands end*, as miſ-printed, ſo long as the Preſs agrees with the Copy. *Pons* in the *Latine* rendred into *Engliſh* ſeems rather to be a *Bridge* then *Points*, or a *Lands end*; *Pons* in the *Latine* ſounds more like *Points* then *Bridge*, and ſo doth *Pont* in the *French*, which yet is a *Bridge*, and not *Point* or *Lands end*; which in the *French* ſeems to be more properly rendred by the word *La pointe* or *un point*; But a *Point* of Land at which Rivers or Waters meet, ſeems to be moſt properly rendred by the word *Bec* in the *French*, which ſeems ſufficiently

ciently diſſonant from the word *Points*. And thoſe Navigators, that by experience know the meaning of *doubling* the *Point*, probably do ſeldome ſail over *Rivers*, either great or ſmall, beneath ſuch *Points*. But this only by way of obſervation upon the ſaid *miſtake*, as reported in the ſaid Caſe of *Leigh* againſt *Burley*; and not in the leaſt by way of any thing elſe in reference to what is not of any private interpretation, but reſerved only for ſuch as unto whom are ſpecially committed the Oracles of the Law.

The Aſſertion, [*That it is not held material, whether the Place be upon the Water*, infra fluxum & refluxum maris, *but whether it be upon any water within any County*] was formerly hinted; yet poſſibly it may be material to know what waters are held to be within a County, ſpecially if the queſtion put by *Doderidge* Serjeant in the ſame Caſe of *Leigh* againſt *Burley* be duly conſidered. In which Caſe it is reported, That the Lord *Coke* ſaid, *That the Admiral ſhould have no Juriſdiction where a man may ſee from one ſide to the other: but the Coroner of the County ſhall inquire of Felonies committed there: which was held to be good by all the other Juſtices; And he gave this difference, that where the Place was covered over with Salt-water, and out of any County or Town, there* eſt altum mare: *but where it is within any County, there it is not* altum mare: *but the tryal ſhall be* per Vicenetum, *of the Town. Doderidge* Serjeant demanded this queſtion,

queſtion, *The Iſle of* Lunday de Corpore Comitatus *of* Devonſhire, *and lyes twenty miles within the Sea; whether is that within the County.* Foſter, *If the Sea there be not of any County, the Admiral hath Juriſdiction, or elſe not.* In this Caſe it is ſaid, that the Admiral hath no Juriſdiction where a man may ſee from one ſide to the other; which in a tranſparent Horizon a man may do from the *Lands end* to the *Caſſiterides*, or Iſles of *Scilly*, which lye ſeven Leagues at leaſt thence diſtant in the main Ocean; and almoſt the like from ſome part of *England* to the other ſide the water over to *France*. The ſaid Iſles of *Scilly* are *de Corpore Comitatus Cornubiæ*, yet doubtleſs the high Admiral of *England* (notwithſtanding both ſides are mutually viſible) hath Juriſdiction on the interfluxt there, though the ſaid word [*within*] ſhould be taken in a ſenſe as large as the Ocean it ſelf. And whereas it is ſaid, that the Admiralty hath not any Juriſdiction of Contracts, Pleas, or Quereles made or done upon a River, Haven, or Creek, within any County of this Realm, probably it is not thereby meant or intended to be limited or reſtrained otherwiſe then according to the Statute-Law, the Laws and Cuſtomes of the Realm, whereof thoſe of the Sea are a part; the Realm of *England* conſiſting of more elements then one. And if you conſult the Topography of ſeveral of the Harbours, Havens, Ports, Rhodes, Bayes, Sounds, and Creeks of this Kingdome, probably

bably the Admiralty might have in more senses then one a more liquid demonstration, then so to be disjurisdictioned by any meer supposition, which had no small operation to the prejudice of the Admiralty in the days of the late Licentious Times, when fancies were much in fashion; thereby reducing Jurisdictions to uncertainty, the common fate of all things, in the said days of *Legerde Brain*, but especially to the needless protelation of Justice, as to Merchants and Mariners in the Legal prosecution of their Maritime Contracts, notwithstanding the Resolutions upon Cases of Admiral Cognizance, subscribed by all the Reverend Judges and Justices of both the Honourable Benches in the Eighth year of the Reign of our late Soveraign *Charles* the *First*, of blessed Memory; wherein among other things relating to that Jurisdiction, it was then unanimously resolved, [*l*] *That in Cases arising upon the* Thames, *the Admiralty hath jurisdiction, specially in the point mentioned in the Statute of* 15 R. 2. And by Equity thereof may inquire of and redress all annoyances and obstructions in those Rivers that are any impediment to Navigation, or passage to or from the Sea, and in all Navigable Rivers. And no Prohibition to be granted. But in the Case of *Goodwin* against *Tompkins*, it seems something otherwise; According to the Report, [*m*] the Case was this. *A Suit was in the Admiral Court for setting a Ship in a Wharf to the damage*

l] Cro. *Rep.* Hil. 8 Car. 1632.

m] Noy *Rep. in Caſ.* Goodwin *against* Tompkins.

damage of the Plaintiff: So that none could come to his Wharf, which is said within the Bill to be within the Ward of Saint Mary Hill: *And a Prohibition was granted: upon a Suggestion, that it was good for the ordering of Ships. A Consultation was granted, but afterwards upon good advice and opening the matter, a* Superſedeas *to the Conſultation was granted,* & quod Prohibitio ſtet; *for the wrong and fact is ſaid to be within a County and Ward; and for that it does not belong to the Admiral: for all Civil Contracts or Treſpaſſes done upon the River of* Thames, *or any other River, that is proper to the Common Law, are tryable in that County, which is next to the Bank, and that ſide of the River where the Fact was done; but in Criminal matters upon any River, that is given to the Admiral by the Statute of* 28 H.8. cap.15. Thus it is reported. But the Reſolution aforeſaid, is, *That in caſes ariſing upon the* Thames *the Admiralty hath Juriſdiction, ſpecially in the point mentioned in the Statute of* 15 *R.* 2. And no Prohibition to be granted.

CHAP.

CHAP. XII.

Of the Juriſdiction of the high Admiralty of England, *Stat.* 13 R. 2. cap. 5. *Stat.* 15 R. 2. cap. 3. *Stat.* 2 H. 4. cap. 11. *&* *Stat.* 27 Eliz. cap. 11.

THE Expoſition, Explanation, and Interpretation of the Statute-Laws being a right properly inherent in the Supreme Authority that enacted them, and in the Reverend Judges, the *Lex Loquens*, or voice of them; there remains no more to the good people of his Majeſties Dominions then to yield all obedience to them, and thereby claim their birth-right in them. In order whereto it is every mans prudence, as much as in him lyes, to clarifie his Intellect; yet with ſuch ſobriety, that as Ignorance may be no *Obex* to his Obedience on the one hand, ſo alſo that ſuper-curioſity may not quite dazle his Intellect on the other; It is not *ignorantia juris*, but *facti*, that can excuſe any; And though in a ſenſe it may properly be ſaid of *Humane* as of *Sacred* Laws, *That they are not of any private interpretation*, whoſe *Oracles* alone are intruſted with the expoſition thereof, yet it is every mans duty to know the Rule of his Duty;

Duty; And he that will understand that he may obey aright, must have a right understanding of what he is to obey. Upon these Considerations it is most clear, That it well becomes all such, who may be concerned in the subject matter of this Treatise, to have right-informed apprehensions (not to make private Interpretations) of the true intent and meaning of the said Statutes in order to a clearer prospect of the Admirall Jurisdiction.

It is enacted by the Statute of 13 *R.* 2. *cap.* 5. *That the Admirals and their Deputies shall not meddle from henceforth of any thing done within the Realm, but only of a thing done upon the Sea, as it hath been used in the time of the Noble Prince King* Edward *Grand-father of King* R. 2. Whence it hath been inferred, that the Jurisdiction of the Admiralty is confined only to things done upon the Sea. The said Statute says, *That the Admirals shall not meddle with any thing done within the Realm, but only with things done upon the Sea, as it hath been used in the time of King* Edward, *Grand-father of* R. 2. that is, in the time of *Edward the Third*, to the usage in whose days the said words seem to have reference, as Limitative with a *Referendo*. And admitting the word [*duly*] if not by the Letter of the Statute, yet by construction of Law, it may seem almost as equally difficult, exactly to know what was the *usage* as what was the *due usage* or what was in this point *duly used* in

in the days of *Edward* the *Third*; only with this difference, that an *usage* being matter of *Fact*, there may be *Rei evidentia*, in that case to prove it self; whereas to know what was *duly used*, may be matter of *Law*, and capable of diversities of opinion consonant to various perswasions. And yet until it be known what was in this matter the *due usage* in the time of *Edward* the *Third*, it seems not indubitably obvious to every running Intellect to conceive what may be the full scope and true intent or meaning, *That the Admirals shall not meddle*, &c. *but only with things done upon the Sea, as it hath been* used *in the time of King* Edward, *Grandfather of King* Richard *the* Second. For the clearer apprehension whereof it may not be impertinent (under submission to better Judgements, and without presuming on any thing *quod est supra nos*, as formerly hinted) to inquire a little what was *used* or *duly used* in this point of Admiral Jurisdiction in the days of the said *Edward* the *Third*, Grandfather to King *Richard* the *Second*.

To this purpose the Learned Mr. *Selden* in his impregnable Treatise of the Dominion and Soveraignty of the *British* Seas, [*a*] lets us to understand, That it appears by Ancient and Publick Records, [*b*] containing divers main points touching which the Judges were to be consulted with for the good of the Kingdome in the time of King *Edward* the *Third*; That Consultation was had for the more convenient guarding of the Sea.

a] *Selden*, de Mar. Claus. lib. 2. cap. 24.
b] Ibid. In Fascic. de Superioritate Maris, in Arce Lond. & Coke, de Antiquit. Admiral. in Par. 4. Instit. cap. 22.

Sea. For the whole Bench of Judges were then advised with, *To the end* (so runs the Record) *That the Form of Proceedings heretofore ordained and begun by* Edward *the* First, *Grand-father to our Lord the King, and by his Council, at the prosecution of his Subjects, may be* resumed and continued, *for the retaining and conserving of the Ancient Superiority of the Sea of* England, *and the* Authority of the Office of Admiralty in the same, as to the Correcting, Expounding, Declaring, and Conserving the Laws and Statutes long since made *by his Predecessors, Kings of* England, *for the* maintaining Justice *among all people of what Nation soever passing through the Sea of* England; *And* to take Cognizance *of all attempts to the contrary in the same; and to punish offenders, and award satisfaction to such as suffer wrong and damage; which Laws and Statutes were by the Lord* Richard *heretofore King of* England, *at his return from the* Holy Land, *interpreted, declared, and published in the Isle of* Oleron, *and named in* French, *Le Ley Oleron.* That which Mr. *Selden* takes special notice of, and commends to our chiefest Observation, is what we find in these Records touching the *Original* of the Naval Laws published at the Isle of *Oleron.* The said Statute of 13 *R.* 2. makes mention of the *usage* in the time of King *Edward*, Grand-father of *R.* 2. who was *Edward* the *Third*; in whose Reign (according to this Record) not only the Form of

of Proceedings ordained by King *Ed.* 1. and his Councel, were to be reſumed and continued for the retaining and conſerving the Authority of the Office of Admiralty, as to the Correcting, Expounding, Declaring and Conſerving the Laws and Statutes made long before by the Predeceſſors of the ſaid King *Edward* the *Firſt*, for the maintaining of Peace and Juſtice among the people of what Nation ſoever, and to take Cognizance of all attempts to the contrary, to puniſh offenders, and to award ſatisfaction to ſuch as ſuffered wrong and damage. But alſo, that thoſe very Laws and Statutes which were ſo to be Corrected, Declared, Expounded and Conſerved by the Authority of the Office of the Admiralty, were the Sea-Laws publiſhed at *Oleron* by King *Richard* the *Firſt*. So that the ſaid Laws of *Oleron* gave the Rule, and ſeems to be the *uſage* concerning the Admiralty in the time of *Edward* the *Third*, whereof the ſaid Statute of 13 *R.* 2. ſpeaks; and by which Laws all Maritime affairs, whether upon or beyond the Seas, are properly Cognizable in the Juriſdiction of the Admiralty. And in thoſe Laws of *Oleron*, ſo publiſhed by *Richard* the *Firſt*, are comprehended the matters of Admiral Cognizance, whereunto that *Form* of *Proceedings* (in theſe Records mentioned, to be ordained by *Edward* the *Firſt*, and afterwards to be reſumed, revived, and continued by *Edward* the *Third*) relates. Which very Records are alſo *verbatim* tranſcribed

scribed and published by the Lord *Coke*, in that part of his *Institutes* concerning the Court of Admiralty, which speaks of the Superiority of *England* over the *Brittish* Seas, and of the Antiquity of the Admiralty of *England*, which he there proves expresly as high as to the time of *Edward* the *First*, and by good inference of Antiquity and Ancient Records much higher. [c] For it appears by Ancient Records, That not only in the days of King *Edward* the *First*, but also in the days of King *John*, all Causes of Merchants and Mariners, and Things happening within the Floud-Mark, were ever tryed before the Lord Admiral. [d]

Again; For the clearer understanding of what was the *Usage* in the time of *Ed.* 3. concerning the Admiralty, it may be observed, That in the beginning of these Records in *Edward* the *Third*'s time it is said, That a Consultation was had, and the whole Bench of Judges advised with, To the end, that the *Form* of *Proceedings* heretofore ordained by *Edward* the *First* and his Council, should be resumed and continued, not only for the retaining and conserving the ancient Superiority of the Sea of *England*, but also the Office of the Admiralty, as to the Correcting, Expounding, Conserving, and Declaring the Laws and Statutes long since made by his Predecessors, for the maintaining of Peace and Justice, &c. If upon a full Consultation in *Ed.* the *Third*'s time, That *Form* of *Proceedings* which had been formerly

c] *Coke* par. 4. Instit. cap. 22. Rot. in Archivis in Turri Lond. De Superioritate Mar. Angl. & jure Officii Admiral. & in alio Rot. de Articulis super quib. Consulr. Anno 12 Ed. 3.

d] *Cowel*, Interp. verb. *Admiral*.

formerly ordained by *Ed.* the *Firſt* and his Councel, ſhall be again reſumed and continued, it ſeems then requiſite in the next place to inquire a little farther, what was ordained by the ſaid *Edward* the *Firſt* and his Councel, over and above what is already mentioned in the ſaid Record. And it appears, that in the days of the ſaid *Ed.* the *Firſt*, there was a good proviſion and remedy ordained for ſuch Complainants as by Prohibitions iſſuing out of one Court to ſurceaſe the Legal proſecution of their rights in another, could obtain redreſs in neither. For by the Statute of the Writ of Conſultation in *Anno* 24 *Ed.* 1. It is enacted, *That where there is a ſurceaſing of Proceedings upon Prohibitions, and the Complainants could have no remedy in the Kings Court, that then the Lord Chancellour, or Lord Chief Juſtice upon ſight of the Libel, ſhould write to the Judges before whom the Cauſe was firſt moved, that they proceed therein notwithſtanding the Kings Prohibition directed to them before.* In a word therefore; The ſaid Statute of 13 *R.* 2. mentions the *Uſage* in the time of *Ed.* 3. *Edward* the *Third* reſumes and continues the Laws of *Oleron* publiſhed by *Rich.* 1. and what was ordained in the time of *Ed.* 1. And *Edward* the *Firſt* ordained as in the Records aforeſaid, and Statute of Conſultation.

The *Expoſitor* of the *Terms of Law* in his deſcription of the Lord Admiral, [*e*] ſays, *That he is an Officer to Judge of Con-*

[*e*] *Terms of Law*, verb. *Admiral.*

Contracts between party and party concerning things done upon or beyond the Seas. And in another of ancient Authority it is ſaid in theſe words, [f] viz. *That if an Obligation bear date out of the Realm, as in* Spain, France, *or ſuch other, it is ſaid in the Law, and truth it is,* (they are the Authours words) *that they be not pleadable at the Common Law.* Alſo the Learned Mr. *Selden* in the fore-cited place ſays, *That the Juriſdiction of the Common Law extends not it ſelf beyond the Sea, and without the Realm of* England; For (as he ſpeaks, [g]) *In the Law of the Land it is reckoned among the Priviledges of ſuch as are abſent, That they, who ſhall be out of the Realm of* England *at the levying of a Fine of any Land, and making Proclamation thereupon, are not ſo bound either by a yearly preſcription, as heretofore, or by a five years preſcription, as is uſuall of later times, but that their right remains entire to them upon their return home.* So that being beyond Sea, and without the Realm of *England* at that time, and nothing of prejudice in that caſe faſtned on them by reaſon of any Non-Appearance, it ſeems as without the reach of the Common Law. And Mr. *Selden* in the ſame place proves, That to be *beyond* the Seas, or *extra quatuor maria*, doth in the Common Law-Books ſignifie the very ſame thing with *extra Regnum.* And again Mr. *Selden* (for 'tis but due as well to the Truth as his Memory to repeat his Authority) in the ſame place

[f] Doct. & Stud. *Dialogue* vel lib. 2. c. 2.

[g] *Seld.* Mar. Clauſ. lib. 2. cap. 24.

place asserts, concerning Things relating to Actions for Matters Maritime, *That they were not wont to be entered in expres's tearms heretofore,* [h] *in the ordinary Courts of the Common Law, whose Jurisdiction was ever esteemed of such a nature, that an Action Instituted about a matter arising in any other place then* within *the bounds of the Realm, was by the ancient strict Law always to be rejected by them. After which manner as it hath been a Custome now for many years, that an Action ought to be rejected, unless the matter have its rise within the* Body, *as they call it, of the County, that is, within some Province or County of the Island, usually given in charge to certain Governours or Officers known to us by the name of Sheriffs; So also is it in the* Sea-Province *belonging by the ancient received custome, to the high Admiral or his Deputies, not only so far as concerns its defence and guard, but also as to matter of Jurisdiction.* Likewise in the same place Mr. *Selden* in honour of the Admiralty says, That in ancient Records, [i] concerning the Customes of the Court of Admiralty, *It was an usual custome in the time of King* Henry *the* First, *and of other Kings both before and after him, That if any man accused of a capital crime done by Sea, being publickly called five times by the voice of the Cryer (after so many several days assigned) did not make his Appearance in the Court of Admiralty, he was banished out of* England, & de mer appurte-

[h] Temp. Ed. 1. Fitzh. tit. Avowry 192. & Placit. 37. & 38 Hen. 3. rot. 10. Devon. Itim Sussex. 47 Hen. 3. rot. 22. & Trin. 24 Ed. 3. in Brevib. Reg. inter Pilke & Venore, quæ in Arcis Londin. Archiv. Ejusmodi item sunt alia.

[i] Ms. fo. 12.

nant au Roy d'Angleterre, *or out of the Sea belonging to the King of* England, *for forty years, more or less, according to the pleasure of the Admiral.* This hath Mr. *Selden* the *Lawyer*, as well as Mr. *Selden* the *Antiquary*; there is far less feasibility of contesting with him, then of gaining honour by subscribing to his authority.

Wherefore, upon an Interestless perpension of what hath been only touch'd, not so largely handled as might have been in a set Treatise proportionable to this subject matmatter, the Jurisdiction of the Admiralty may be found not only a Body of more Solidity then to dissolve only into Water, and not only a Jurisdiction proceeding by such Laws as have from age to age successively been owned by the Supreme Authority of this Nation, but also such a Jurisdiction as though it hath its due bounds, yet possibly (according to what hath been *duly used* in the time of King *Edward* Grand-father of King *Rich.* 2.) not so exceedingly straightlaced as some in the late Licentious times imagined; specially if in addition to the Premises they consider what hath been formerly said to have been urged by *Haughton*, [k] *viz. That the intent of the Statute of* 13 R. 2. cap. 5. *was not to inhibit the Admiral Court, to hold Plea of any thing made* beyond Sea, *but only of things made within the Realm, which pertains to the Common Law, and is not in prejudice of the King or Common Law, if he hold Plea over the*

k] Brownl. Rep. Par. 2. *Admiral Court-Case.*

the Sea; And that this was the intent of the Statute, appears by the Preamble. And in the ſame Report it is farther ſaid, *That* Walmeſly *and* Warburton *Juſtices agree, That if a thing be done* beyond *Sea, as if an Obligation bears date* beyond *Sea, or be ſo* Local, *that it cannot be tryed by the Common Law, if the Admiral hold plea of that, Prohibition ſhall not be awarded, for it is not to the prejudice of the King or of the Common Law.*

By the Statute of 15 *R.* 2. *cap.* 3. It is Enacted and Declared, *That the Court of Admiralty ſhall have no cognizance of Contracts, Pleas, and Quereles, or other things done within the Bodies of the Counties, as well by Land as by Water; Nevertheleſs of the Death of a man, and of Mayhem done in great Ships being and hovering in the main ſtream of great Rivers only beneath the Bridge of the ſame Rivers nigh to the Sea, and in no other places of the ſame Rivers, the Admiralty ſhall have cognizance.* From hence it hath been obſerved by way of Inference, how Curious the Makers of this Statute were to exclude the Admiralty of all manner of Juriſdiction within any water which lyeth within any County of this Realm; poſſibly it hath not been ſo exactly obſerved by way of Redreſs, how unfortunate ſpecially of late years the ſame hath been, in having its Juriſdiction impeded and obſtructed in Waters without any County of this Realm, by the Prohibitory Conſequences

of a Surmize or Suggeſtion, when *in rei veritate*, the matter was otherwiſe then ſurmized or ſuggeſted. This is that Statute whereof mention is made in the precedent Chapter, touching the miſtake of the word [*Bridge*] inſtead of [*Points*]. It ſeems ſomething more then ſtrange in Nature, to find a main ſtream, or great Rivers (whereof this Statute ſpeaks) beneath the Points which beak out into the main Sea, as Navigators well know when they *double* the *Point*, the main Sea or great Rivers being commonly emptyed into the main Ocean above, not beneath ſuch Points, and uſually ceaſe to be ſtreams or Rivers before the Waters thereof reach the ſaid Points. And it were no prejudice if it were aſcertained what Havens and Harbours may be held as within the Bodies of ſome County, becauſe poſſibly *Geographers* know not with what Counties to incorporate *Milford-Haven*, *Mount-Bay*, *Tor-Bay*, *Plymouth-Sound*, and the like. The Law in expreſs tearms hath put the difference, *Res facta in Portu, non facta in Terra.* [*l*] The Law knows no preternatural confuſion of Elements, *Lex ſemper imitatur Naturam.* Time was *(& olim meminiſſe dolebit)* in the late Licentious days, when the Admiralty of *England* between *Land-imagined*, and the *Sea-County-corporated*, could ſcarce keep *above water*; But now that Juſtice once more looks like it ſelf, and *ſuum cuique tribuitur*, miraculouſly arrived inſtead of *ſic volo, ſic jubeo*, &c.

[*l*] Cæpol. de Servit. Ruſt. cap. 28. nu. 5. & Bald. in Ruh. de Reg. Diviſ.

&c. Inſomuch that it might then be as truly as ſadly ſaid, *Terras Aſtræa reliquit*; yet now that Juſtice by an over-ruling hand of Divine Providence is again turned into its ancient and proper Channel, and it being well known to the whole world of what luſtre and value the Jewel of the Admiralty is (when well ſet) in the Diadem or Crown of *Great Brittain*, it may not now be unſeaſonable to alledge what is aſſerted, (as is aforeſaid) to be of ancient Record, [*m*] *viz. That not only in the days of* Edward *the* Firſt, *but alſo in the days of King* John, *All Cauſes of Merchants and Mariners, and things happening within the Floud-Mark were ever tryed before the Lord Admiral.* Conſonant to what was reſolved in Sir *Hen. Conſtables* Caſe, [*n*] *That the ſoyl betwixt the high and low Water-Mark may be the Subjects; but when covered with water, the Admirals Juriſdiction reaches to it.*

[*m*] *Cowel* Interp. verb. *Admiral.*

[*n*] Coke *Rep. in Caſ. Sir* Hen. Conſtable.

By the Statute of 2 *H.* 4. *cap.* 11. It is Enacted, *That the Statute of* 13 R. 2. cap. 5. *ſhall be firmly holden, and kept, and put in execution.* This Statute therefore ſeems as a reviver, or in confirmation of that, which (as aforeſaid) mentions *according to that which hath been duly uſed in the time of King* Edward, *Grand-father of King* Richard *the Second*; which being formerly inſiſted on, a retroſpect may here ſuffice.

By the Statute of 27 *Eliz. cap.* 11. It is Enacted, *That all and every ſuch of the ſaid offences before mentioned, as hereafter ſhall be*

5 Eliz. cap. 5. Cokes Inſtit. par. 4. cap. 22.

be done upon the main Sea, or Coasts of the Sea, being no part of the Body of any County of this Realm, and without the Precinct, Jurisdiction, and Liberty of the Cinque-Ports, and out of any Haven or Pier, shall be tryed and determined before the Lord Admiral, &c. It hath been hence inferred, That by the Judgement of the whole Parliament, the Jurisdiction of the Admiralty is wholly confined to the main Sea, or Coasts of the Sea, being no parcel of the Body of any County of this Realm; And that this Statute is a particular description of that Jurisdiction as to the limits thereof. This Statute gives the Jurisdiction of the Admiralty a power of Cognizance in such Offences done upon the main Sea, or Coasts thereof; there's the Ampliation: Being no part of the Body of any County, and without the precinct of the Cinque-Ports, and out of any Haven or Pier; there's the Limitation. Where either of these is part or parcel of the Body of any County within this Realm, the Admiralty may not claim Jurisdiction therein. Touching Contracts made beyond Sea the said Letter of this Statute is silent; In the Resolutions upon the Cases of Admiral Jurisdiction, [o] the substance of the first Article or Proposition is, *That no Prohibition be awarded against the Court of Admiralty in Suits there Commenced upon Contracts made beyond the Seas.*

o] Croke *Rep.* Hil. 8. Car. 1. *Resolution upon Cases Admirall.*

CHAP.

CHAP. XIII.

Of the Agreement touching the Admiralty in Anno 1575. *As alſo of the Reſolutions,* Hill. 8. Car. 1. *upon the Caſes of Admiral Juriſdiction.*

THE Non-obſervance of the ſaid Agreement, being for the more quiet and certain execution of Admiral Juriſdiction, was one of the Objections of the Admiralty in *Anno* 8 *Jac. Reg.* whereof mention is made by the Lord *Coke*, *in Par.* 4. *Inſtit. cap.* 22. And where it is ſaid to be a ſuppoſed Agreement, and that it had not been delivered to the then Judges, but acknowledged to have heard the ſame read over in His Majeſties Preſence; And to which Anſwer was then made, *That for ſo much thereof as differeth from thoſe Anſwers,* (*viz.* to the other Objections then made) *it is againſt the Laws and Statutes of this Realm: And therefore the Judges of the Kings Bench never aſſented thereunto, as is pretended, neither doth the phraſe thereof agree with the tearms of the Laws of the Realm.* This was the Anſwer then given to that Objection grounded upon the ſaid Agreement. Whether the ſame were no more then ſuppoſed, may be referred to the matter of Fact; wherein, if ſo, the *evidentia rei* will eaſily liquidate the ſcruple, and diſſipate dubieties.

dubieties. Though the ſaid Agreement be diſagreed, yet the Law like the Axis of the Body Politick, remains fixed notwithſtanding the rotation of opinions; And whether ſo much thereof, as differed from the Anſwers then made to the other Objections, were repugnant to the Laws and Statutes of the Realm, or the phraſe diſcrepant from the tearms thereof, would be more viſible upon an Inſpection, were it free to inſert that as an Imprinted Agreement here, which is called but a ſuppoſed Agreement there; Therefore to inquire how far the ſaid Agreement made, or ſuppoſed to be made, in one age, may be obligatory in another, may poſſibly have an implication of more verity and reality, then the thing it ſelf with general conſent doth or may challenge; yet being in ſubſtance Conſonant to the ſubſequent Reſolutions upon the Caſes of Admirall Juriſdiction, and being an Objection long ſince under a former Impreſſion, with the Anſwer thereto as aforeſaid, it may be now a leſs Tranſgreſſion to omit the Thing it ſelf, *ſaltem in terminis*, then Digreſſion to have given this ſhort hint thereof, *quaſi in nubibus*.

The Reſolutions, *Hill.* 8. *Car.* 1. upon the Caſes of Admiral Juriſdiction, being the Articles, Propoſitions, and Agreement made and ſubſcribed in *Febr.* 1632. by all the Reverend Judges of both the Honourable Benches, for the accommodating and ſetling the Differences concerning Prohi-

bitions,

bitions, are very Energetical in Affirmance of much of the Rights of the ſaid Juriſdiction. The Sun need not borrow the Auxiliaries of Art to demonſtrate his Light. Theſe Articles and this Agreement (whatever the former be) are more then ſuppoſed, being reall and true. You have it here (as to the Body and Subſtance thereof) in no other words then Sir *Geo. Croke* in his *Reports* delivers it; with the requiſite Addition of the ſtyle or Preface thereto, together with the names of the Lords of His Majeſties moſt Honourable Councel then preſent; As followeth, *viz.*

At White Hall, 18 Febr. 1632.

Preſent,

The Kings Moſt Excellent Majeſty.

Lord Keeper.
Lord Arch-Biſhop of *York.*
Lord Treaſurer.
Lord Privy Seal.
Earl Marſhal.
Lord Chamberlain.
E. of *Dorſet.*
E. of *Carliſle.*
E. of *Holland.*
E. of *Denbeigh.*
Lord Chancellour of *Scotland.*

E. of

E. of *Marton.*
Lord V. *Wimbleton,*
Lord V. *Wentworth.*
Lord V. *Faulkland.*
Lord Biſhop of *London.*
Lord *Cottington.*
Lord *Newburgh.*
Mr. Treaſurer.
Mr. Controller.
Mr. Vice-Chamberlain.
Mr. Secretary *Coke.*
Mr. Secretary *Windebank.*

This day His Majeſty being preſent in Councel, the Articles and Propoſitions following for the accommodating and ſetling the Difference concerning Prohibitions, ariſing between His Majeſties Courts at Weſtminſter, *and His Court of Admiralty, were fully Debated and Reſolved by the Board; And were then likewiſe upon reading the ſame as well before the Judges of his Majeſties ſaid Courts at* Weſtminſter, *as before the Judge of His ſaid Court of Admiralty, and His Atturney General, Agreed unto and ſubſcribed by them all in His Majeſties Preſence,* viz.

1. If Suit ſhould be commenced in the Court of Admiralty upon Contracts made, or other things Perſonal, done beyond the Seas, or upon the Sea; No Prohibition to be awarded.

2. If

2. If Suit be before the Admiral for Fraight, or Mariners wages, or for breach of Charter-parties, for Voyages to be made beyond the Seas: Though the Charter-party happen to be made within the Realm; ſo as the Penalty be not demanded, a Prohibition is not to be granted. But if the Suit be for the Penalty; Or if the queſtion be, whether the Charter-party were made or not; Or whether the Plaintiff did releaſe or otherwiſe diſcharge the ſame within the Realm; This is to be tryed in the Kings Courts at *Weſtminſter*, and not in His Court of Admiralty.

3. If Suit be in the Court of Admiralty for Building, Amending, Saving, or neceſſary Victualling of a Ship, againſt the Ship it ſelf, and not againſt any party by name, but ſuch as for his Intereſt makes himſelf a party; No Prohibition is to be granted, though this be done within the Realm.

4. Although of ſome Cauſes ariſing upon the *Thames* beneath the firſt Bridge, and divers other Rivers beneath the firſt Bridge, the Kings Courts have Cognizance; Yet the Admiralty hath alſo Juriſdiction there, in the point ſpecially mentioned in the Statute of 15 *R.* 2. And alſo by Expoſition and Equity thereof, he may inquire of and redreſs all annoyances and obſtructions in theſe Rivers, that are any impediment to Navigation or Paſſage to or from the Sea: And alſo to try Perſonal Contracts and Injuries

juries done there which concern Navigation upon the Sea. And no Prohibition is to be granted in such Cases.

5. If any be imprisoned, and upon *Habeas Corpus* brought; If it be certified, that any of these be the Cause of his Imprisonment, the party shall be remanded.

Subscribed Febr. 1632. *By all the Judges of both Benches.*

AN

AN EXTRACT, By way of APPENDIX, Of the Ancient LAVVS of Oleron.

Rendred into *Engliſh* out of GARSIAS *aliàs* FERRAND.

Together with
Some Marginal Obſervations thereon.

LONDON,
Printed in the Year 1661.

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By way of

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Some Marginal Observations
thereon.

LONDON.
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AN EXTRACT (By way of APPENDIX) of the Ancient Sea-Laws of OLERON;

Rendred into Engliſh out of *Garſias*, aliàs *Ferrand*.

The Judgements of the *Sea*, and the Iſle of *OLERON*.

For the Regulation and Government of Merchants, Owners of Ships, Part-Owners, Maſters of Ships, and Common Mariners in all Maritime Affairs.

I.

WHen a Ship or other Veſſel, whereof a Maſter is made, belonging to ſeveral Part-Owners, and departing from her own Port, arrives at *Burdeoux*, *Rouen*, or ſuch like place, and is there Fraighted to ſail for *Scotland*,

Skippers Sale, without ſpeciall Procuration, not good.

or ſome other Forraign Country; The Maſter in ſuch caſe may not ſell or diſpoſe the ſaid Veſſel without Licence or a ſpecial Procuration for that purpoſe from the ſaid Owners; But in caſe he want monies for the Victualling, or other neceſſary proviſions of the ſaid Veſſel, he may for that end with the advice of his Mariners, hypothecate, pawn, or pledge part of the Tackle or Furniture of the ſaid Ship.

Ship-Tackle pawned for Ship-neceſſaries, good.

II.

Skipper not to quit a Port without advice of his Mariners.

If a Ship or other Veſſel be in a Port or Haven, waiting for her Fraight, therewith to depart; the Maſter, before he depart thence, ought firſt to Conſult with his Company, and ſay, (Sirs) We have now an opportunity to ſet Sail; Some of them poſſibly will ſay, The Weather as yet ſeems not good enough, the Wind being but now newly changed, and we ought to ſee it ſomewhat ſetled; Others of them poſſibly will ſay, The Weather is good and fair: In this Caſe the ſaid Maſter is to concur with the Opinion of the major part of his Company; If he does otherwiſe, and the Veſſel happen to miſcarry thereby, he is obliged to make good the ſame, according to the value upon a juſt appraiſement.

III. If

III.

If any Veſſel through misfortune happen to be caſt away, in whatſoever place it be, the Mariners are bound to uſe their beſt endevour for the ſaving as much of the Ship and Lading as poſſibly they can; And if they preſerve part thereof, the Maſter is bound to allow them reaſonable Conſideration, whereby to get home to their own Country; And in caſe they ſave ſo much as whereby the Maſter may do this, then may he lawfully pledge to ſome honeſt perſons ſuch part thereof as may ſerve for that occaſion. But if they have not endevoured to ſave as aforeſaid, then the Maſter is not bound to provide for them in any thing; but rather they loſe their wages when the Veſſel is loſt. And the Maſter may not ſell the Furniture of the Veſſel, or her Lading without a Procuration for that purpoſe from the Owners and Merchants; But yet he ought, if it may be, to have the Mariners in a readineſs, until he knows the pleaſure of the Owners; And herein he ought to doe as becomes a prudent Maſter; for if he does otherwiſe, he is obliged to ſatisfaction.

Mariners in caſe of that like Wreck, to ſave what may be ſaved.

Skippers Sale, in caſe of diſaſter, not good without ſpeciall procuration.

IV.

A Veſſel Laden, departing from *Rochel*, or ſome other place, happens in the Courſe

of her Voyage to be rendred unfit to proceed therein, yet the Mariners ſave as much of the Lading as poſſibly they can; The Merchants and Maſter are at variance, requiring to have their Merchandize or the Lading from the Maſter; They ought indeed to have them, paying Fraight for ſo far as they made the ſaid Voyage, *Kenning* by *Kenning*, and *Courſe* by *Courſe*, if it ſo pleaſe the Maſter. But if he will, he may repair his Veſſel, if ſo be ſhe be in ſuch caſe as that readily ſhe may be repaired; but if otherwiſe, and he cannot hire another Veſſel to finiſh his ſaid Voyage, then the Maſter ſhall have his Fraight for ſo far of the ſaid Voyage, and for ſo much of the Lading as is there ſaved. And the Fraight of the Goods that are ſaved, ought all of it to be reckoned *Liver* by *Liver*, and the ſaved Goods to pay the Coſts of their ſalvage, according as they ſhall happen to be. And in caſe it happens that the Maſter, Merchant, or Mariners promiſed the People of the Country, where ſuch misfortune is, a third or one moity of what by their help ſhould be ſaved of the Ship and Lading, out of the dangers they were in; In that caſe the Juſtice of that Country, where ſuch misfortune happens, ought well to conſider what pains they beſtowed, and what hazards they did run in the ſaving thereof, and to reward them accordingly, notwithſtanding what promiſe in ſuch diſtreſs ſo made them as aforeſaid by ſuch Maſter, Merchant, or Mariner.

Part of fraight to be paid for part of a Voyage.

The Skipper, to hire another Ship to finiſh his Voyage, in caſe of diſaſter to his own.

The Reward of Salvage not to be paid according to promiſe made in time of diſtreſſe, but as the Court of Admiralty ſhall determine according to Equity.

V. If

V.

If a Veſſel depart from any Country Laden or Empty, and arrive at any Port, the Mariners ought not to leave the Ship, or to go out of her without the Maſters Leave or Licence; For if otherwiſe, and the Veſſel ſhould happen to be loſt, or by any misfortune be damnified, they are obliged to make ſatisfaction for the ſame. But if the Veſſel was in ſuch a place, as wherein ſhe was Anchored and Moared with two or three Cables, they may then lawfully go out of her without the ſaid Maſters Licence, provided they leave behind them on Ship-board ſuch a number of the Ships Company, their Fellow-Mariners, as is ſufficient to keep the Decks, and the Merchandize or the Lading of the Ship, provided alſo that they return again in due time and ſeaſon to their ſaid Ship. For if they make unneceſſary delays, or ſtay from the Ship longer then is meet, they ought to make ſatisfaction, if they have wherewithal.

Mariners (without the leave of the Skipper) may not go out of the Ship, when arrived to a Port.

In ſome caſes ſome of them may.

V I.

If ſome of the Mariners, that hired themſelves with the Maſter, go out of the Ship without his Leave, and drink themſelves drunk, or the like, whereby there happens Contempt to their Maſter, beſides Debates,

Fightings and Quarrellings among themſelves, whereby ſome happen to be wounded; In this Caſe the Maſter is not obliged to get them healed, or in any thing to provide for them, but rather to diſcharge them of the Veſſel, and to turn them out of the Ship, both them and their Comrades. But if by the Maſters Order and Command any of the Ships Company be in the ſervice of the Ship, and therein happen to be wounded or otherwiſe hurt, in this Caſe they ought to be healed and provided for at the Coſts and charges of the ſaid Ship.

Mariners drunk a ſhore, and wounded, not to be healed at the Ships charge.

Mariners wounded in the Ships ſervice, are to be healed at the Ships charge.

VII.

If it ſo happens that Sickneſs doth ſeize on any of the Mariners of the Ship, while he is in the ſervice of the ſaid Ship, the Maſter ought to ſet him on ſhore, and to let him have Candle-Light, and to provide him a Lodging, as alſo to ſpare him one of the Ship-boyes to look to him, or hire a woman to attend him; Likewiſe to afford him ſuch Diet as is uſual in the Ship, that is to ſay, ſo much as he had a Shipboard in his health, and nothing more, unleſs it pleaſe the Maſter to allow him more; And if he will have better Diet, the Maſter is not bound to provide it for him, unleſs it be at his own Coſts and Charges. And if the Veſſel be ready for her departure, ſhe ought not to ſtay for the ſaid ſick party; If he

How ſick Mariners are to be provided for.

The Ship not to ſtay for a ſick Mariner.

he recover, he ought to have his full wages or competent hire, rebating or deducting only ſuch Charges as the Maſter hath been at for him; And if he dyes, his wife or next of kin ought to have it. *

Sick Mariners ought to have their full wages, deducting the charge of his ſickneſs.

* Executors of a deceaſed Mariner, ought to receive the wages due to him.

VIII.

A Veſſel is Laden to ſail for *Rouen*, or ſome other place; it happens that a ſtorm overtakes her at Sea, and ſo violent that ſhe cannot eſcape without caſting ſome of her Lading and the Merchandize over board, for lightning the ſaid Veſſel, and preſerving the reſt of the Lading, as alſo of the Veſſel it ſelf; In this Caſe the Maſter ought to ſay, Sirs, It is fit or expedient to caſt over board ſome part of the Lading to ſave the Veſſel; And if there be no Merchant that anſwers his pleaſure herein, or accords and approves thereof by his ſilence; Then the Maſter ought to uſe his diſcretion, and to do what in him lyes, and to caſt part of the Lading over board; And if this pleaſe not the Merchants, but that they gain-ſay or contradict it, yet the Maſter, notwithſtanding this, ought not to forbear caſting out ſo much goods as he ſhall ſee may be for the common good and ſafety; he and the third part of his Mariners making Oath on the Holy Evangeliſt, when they arrive at their right

In caſe of ſtorm, Skipper to uſe his diſcretion in caſting goods over board, to lighten the Veſſel, and to preſerve the ſame.

right Port of Diſcharge, that he did it only for the preſervation of the Veſſel, and the reſt of the Lading that remains yet in her. And the Wines (or other goods) that were caſt over board, ought to be valued and prized according to the juſt value of the other goods that arrive in ſafety. And when theſe ſhall be ſold, the price or value thereof ought to be divided *Liver* by *Liver* among the Merchants; And the Maſter ought to make the diviſion, and to compute the damage of the Veſſel, or the Fraight at his own choice for the recovery thereof; And the Mariners alſo ought to have one Tun free, and another divided by Caſt of the Dice, according as it ſhall happen, if he make it appear he did the part of an able Sea-man. But if he make not this to appear, then he ſhall have nothing freely; and the Merchants in this Caſe may lawfully put the Maſter to his Oath.

What the Law is in the caſe of Averidge.

IX.

If it happen that by reaſon of much foul weather the Maſter is like to be conſtrain'd to cut his Maſts, he ought firſt to call the Merchants, if there be any a board the Ship, and ſuch as have goods and Merchandize in the Veſſel; and to ſay unto them, Sirs, It is requiſite to cut down the Maſt, to ſave the Ship and Lading, it being in this caſe no more then becomes my duty; And oft times

What the Law is in caſe of cutting Maſts or Cables in a ſtorm.

times it comes to paſs that they alſo cut their Moaring Cables, leaving behind them their Cables and Anchors to ſave the Ship and her Lading. All theſe things are reckoned and computed *Liver* by *Liver*, as goods are that were caſt over board; And when the Veſſel arrives in ſafety at her right Port of Diſcharge, the Merchants ought to pay their ſhares or proportions without delay, or ſell the goods and pledge the mony thereof proceeding to ſatisfie the ſame before ſuch time as the ſaid goods may be unladen out of the ſaid Ship. And if the Veſſel be ſuch as uſually is let out for hire upon Fraight, and there happen Controverſies and Debates touching the premiſes, if the Maſter obſerves Colluſion therein, he ought not to depart, but is to have his compleat Fraight as if his Tunnage were full.

X.

When a Maſter arrives in ſafety at the right Port of his Diſcharge with his Veſſel, he ought to ſhew his Merchants the Cordage, Ropes, or Slings, wherewith he intends to hoyſe the goods over board; And if they find that they need mending, he ought to mend the ſame; For if a Pipe, Hogſhead, or other Veſſel, ſhould happen by default of ſuch Cordage, or Slings, to be ſpoyled or loſt, the Maſter and Mariners ought to make ſatisfaction for the ſame to the

The ſhip-ropes or ſlings to hoyſe out goods withal, to be viewed before uſed.

the Merchants. So alſo if the Ropes or Slings break, the Maſter not foreſhewing them to the Merchants, he is obliged to make good the damage. But if the Merchants ſay the Cordage, Ropes, or Slings are good and ſufficient, and it notwithſtanding happen that they break, in that caſe each of them ought to divide the damage, that is to ſay, the Merchant to whom ſuch goods belong, and the ſaid Maſter with his Mariners.

XI.

A Veſſel being Laden with Wines or other Goods, hoyſes Sail to tranſport the ſame to *Breſt*, or ſome other place, but the Maſter and Mariners trim not their Sails ſo as they might or ought to have done, and it happens that ill weather overtakes them at Sea, and ſo as that the main yard ſhakes or ſtrikes out the head of one of the Pipes, or Hogſheads of Wine; This Veſſel being in ſafety arrived at her Port of Diſcharge, the Merchant ſays to the Maſter, That by reaſon of his main yard his Wine was loſt; The Maſter replying, ſays, It was not ſo: In this caſe if the Maſter and his Mariners will make Oath (be it four or ſix, and ſuch of them as the Merchant hath no exception againſt) That the Wine periſh'd not by the main yard, nor by them, or through their default, as the Merchant charges them, they ought

Goods damnified at Sea, whether by the Ship-tackle or not, to be purged and cleared by the Oath of the Skipper and part of his Company.

ought then to be acquitted thereof; But if they refuſe to make Oath to the effect aforeſaid, they are then obliged to make ſatisfaction for the ſame, for that they ought to have ordered their Sails aright before they departed from the Port where they took in their Lading.

XII.

A Maſter having hired his Mariners, he ought to keep the Peace betwixt them, and to be as their Judge at Sea; ſo that if there be any of them that gives another the *Lye*, whileſt they have Wine and Bread on the Table, he ought to pay four *Denieres*; And if the Maſter himſelf give any the *Lye*, he ought to pay eight *Denieres*; And if any of the Mariners give the Maſter the *Lye*, he alſo ought to pay eight *Denieres*. And if the Maſter ſtrike any of his Mariners, he ought to bear with the firſt ſtroak, be it with the fiſt or open hand; but if the Maſter doth fiercely aſſault him with more ſtroaks, the ſaid Mariner may defend himſelf; but and if the ſaid common Mariner doth firſt aſſault the Maſter, he ought to pay five *Solz*, or loſe his hand.

The Law in caſe of the Lye, or a ſtroak given by or to the Skipper or his Mariners.

XIII.

If a difference happen between the Maſter

ſter of a Ship, and any one of his Mariners, the Maſter ought three times to take away from him, or lift up before the ſaid Mariner the *Towel*, ere he turn him out of the Ship, or diſcharge him thereof; But if the ſaid Mariner offer in the preſence of the reſt of the Mariners to make the Maſter ſatisfaction, and the Maſter be ſo reſolved that he will accept of no ſatisfaction from him, but notwithſtanding ſuch offer of ſatisfaction will put him out of the Ship; In ſuch caſe the ſaid Mariner may betake himſelf to follow the ſaid Veſſel to her Port of Diſcharge, and ought to have as good hire or wages as if he had come in the Ship, or as if he had made ſatisfaction for his fault in the ſight and preſence of the Ship-Company; And if the Maſter take not another Mariner into the Ship in his ſtead, as able as the other, and the Ship or Lading happen thereby to be through any misfortune damnified, the Maſter is obliged to make good the ſame, if he hath wherewithal.

The Law in caſe of difference between the Skipper and any of his Mariners.

Skipper to take an able Mariner in the abſence of another, or to make good the damage, if any thereby.

XIV.

If a Veſſel lying at Anchor be ſtruck or grapled with by another Veſſel under Sail, that is not very well ſteer'd, whereby the Veſſel at Anchor is prejudiced, as alſo Wines, or other Merchandize in each of the ſaid Ships damnified; In this caſe the whole damage is to be in common, and to be

be equally divided and appraized half by half; And the Master and Mariners of the Vessel that struck or grapled with the other, are bound to swear on the holy Evangelist that they did it not wittingly or wilfully. And the reason why this Judgement was first given, was, That an old decayed Vessel might not purposely be put in the way of a better, which will the rather be prevented when they know that the damage must be divided.

In case of Collision, one ship against another, the damage to be in common, and equally divided, yet so as they both (if need be) purge themselves of all wilfulness by Oath.

XV.

Suppose two or more Vessels in a Harbour where there is but little water, so as that the Anchor of one of the Vessels lyes dry; The Master of the other Vessel ought in that case to say unto him whose Anchor lyes dry; Master, Take up your Anchor, for it is too nigh us, and may do us a prejudice; if neither the said Master nor his Mariners will take up the said Anchor accordingly, then may that other Master and his Mariners (who might be otherwise thereby damnified) take up the said Anchor, and let it down again at a farther distance from them; And if the others oppose or withstand the taking up of their Anchor, and there afterwards happen damage thereby, they are bound to give full satisfaction for the same; In like manner it is, if they neglect the placing of a Boy to the Anchor, and

What the Law is in placing of Anchors in Harbours, specially where there is but little water; as also of Boys to the said Anchors.

and damage happen thereby, they are obliged to repair the ſame; And ſo alſo it is in caſe damage ſo happen in a Haven at low water, for they ought to faſten ſuch Boys or Anchor-marks, and ſuch Cables to their Anchors, as may plainly appear and be ſeen at full Sea.

XVI.

What the Mariners Immunity or Priviledge anciently was in Fraight; which is now grown obſolete.

A Veſſel going to ſeek a Fraight, arrives at her place of Lading in *England*, or elſewhere; the Maſter ought then to ſay to his Company; Sirs, Will you Fraight by your ſelves, or be allowed at the Fraight of the Ship? They are to anſwer which of the two they intend; if they take as the Fraight of the Ship ſhall happen, they ſhall have proportionably as the Ship hath. And if they will Fraight by themſelves, they ought to Fraight ſo as that the Ship be not impeded or hindred thereby. And if it ſo happen, that Fraight may not be had, the Maſter is blameleſs; and he ought to ſhew them their Ship-fare, which he may weigh out to each of them. And if they will there lade a Tun of Water in ſtead of ſo much Wine, they may; And in caſe there ſhould happen at Sea a caſting of goods over board, the Caſe is the ſame for a Tun of Water as in a Tun of Wine, or other goods, *Liver by Liver*. And if ſo be that Merchants do Fraight the ſaid Veſſel for Tranſportation of Goods,

Goods, what freedome and immunity the ſaid Mariner hath, the ſaid Merchant ſhall alſo have.

XVII.

The Mariners of *Brittain* ought to have but one meal a day from the Kitchin, becauſe they have Beverage or Drinkings out and home; But thoſe of *Normandy* are to have two meals a day, becauſe they have only water at the Ships allowance; only when the Ship arrives at a Wine-Country, there the Maſter is to procure them Wine to drink.

It ſeems in thoſe days this was the Law; Now no ſuch thing in uſe.

XVIII.

When a Veſſel doth diſcharge or unload, and the Mariners demand their wages, whereof ſome have neither Bed, Cheſt, nor Cabbin aboard, the Maſter may lawfully retain part of their wages till they have brought back the Ship to the Port from whence ſhe came, unleſs they give good caution to ſerve out the whole Voyage.

The Skipper may compel the Mariner to complete the Ships Voyage.

XIX.

If the Maſter hire the Mariners in that Town whereunto the Veſſel belongs, whereof ſome at their own finding, others of them

at his own coſts and proviſion; And it happen that the Ship cannot procure Fraight in thoſe parts where ſhe is now arrived, but muſt ſail yet farther to obtain it; In ſuch Caſe they that are at their own finding, ought to follow the Maſter, and ſuch as are at his own coſts, ought to have their wages advanced *Kenning* by *Kenning*, and *Courſe* by *Courſe*, for that he hired them to one certain place. And if they go not ſo far as to that place for which the Contract was made, yet they ought to have the whole promiſed hire, as if they had gone thither; But they ought to bring back the Veſſel to the place from whence they took her.

The Contract for wages muſt be performed, though the Voyage be not; ſo as the fault be not in the Mariners.

XX.

When a Veſſel arrives at *Konen*, or any other place, two of the Mariners at a time may go a ſhore and take with them one meal of ſuch Victuals as is in the Ship, therein cut and provided, as alſo Bread proportionably as much as they eat at once, but no Drink: And they ought very ſpeedily and in ſeaſon to return to their Veſſel, that thereby the Maſter may not loſe the earneſt or hire of the Ship; for if ſo, and damage come thereby, they are bound to make ſatisfaction; or if any of their Company be hurt for want of their help, they are to be at ſuch charge of his recovery as one of his Fellow-Mariners, or the Maſter, with thoſe of the Table ſhall judge or arbitrate.

What the Law is touching Mariners going a ſhore when the ſhip is in Port.

XXI. If

XXI.

If a Maſter lets his Ship to Fraight to a Merchant, and ſet him a certain time within which he ſhall lade his Veſſel, that ſhe may be ready to depart at the time appointed, and he lade it not within the time, but keep the Maſter and Mariners by the ſpace of eight days, or a fortnight, or more, beyond the time agreed on, whereby the Maſter loſeth the opportunity of a fair wind to depart, by reaſon of this the Merchants ſaid default; The ſaid Merchant in this caſe is obliged to make the Maſter ſatisfaction for ſuch delay, the fourth whereof is to go among the Mariners, and the other three fourth parts to the Maſter, becauſe he finds them their expences.

The Merchant to pay Demourage, when it happens through his own default.

XXII.

When a Merchant Fraights a Veſſel at his own charge, and ſets her to Sea, and the ſaid Veſſel enter into an Harbour, where ſhe is wind-bound, that ſhe ſtays ſo long till her monies be all ſpent, the Maſter in that caſe ought ſpeedily to ſend home to his own Country for mony; but he ought not to loſe his *armogan*, or deſert his Voyage or main deſign; for if ſo, he is then obliged to make good to the Merchant all ſuch damages as ſhall enſue thereby; But yet the Maſter

What the Law is in caſe a Skipper on his Voyage be reduced to Neceſſities in a Forraign Port.

In some cases the Skipper may sell part of his Lading.

may take part of the Wines or other Merchand-goods, and dispose thereof to compass his return; And when the said Vessel shall be arrived at her right Port of Discharge, the said Wines that the Master hath so disposed of, ought to be valued and appraized at the same rate as the other Wines shall be commonly sold for, at no more nor less, and accordingly be accounted for to the Merchant; And the Master ought to have the Fraight of such Wines as he hath so taken and disposed of for the use and reason aforesaid.

If part of a Merchants Cargo be sold to supply the Necessities of the Ship, the value and fraight thereof is to be made good to and by the said Merchant.

XXIII.

If a Pilot undertaking the Conduct of a Vessel, to bring her to St. *Malo*, or any other Port, fail of his duty therein, so as the Vessel miscarry by reason of his ignorance in what he undertook, and the Merchants sustain damage thereby, he is obliged to make full satisfaction for the same, if he hath wherewithal: And if he be not able to make satisfaction, he ought to lose his head. And if in that case the Master or any of the Mariners, or the Merchants, cut off his head, they are not bound to answer for it; But yet before they do this, they ought to know whether he hath wherewith to make satisfaction.

The head of an unskilful Pilot must go for the loss of a Vessel occasioned by his unskilfulness, in case he hath not wherewith to make satisfaction.

XXIV. A

XXIV.

A Veſſel being arrived at her Port of Diſcharge, and hoyſed up there into dry ground, and ſo as the Mariners deeming her to be in good ſafety do take down her Sails, and ſo fit the Veſſel a *loof* and *aft*, the Maſter now ought to conſider an increaſe of their wages *Kenning* by *Kenning*; And if in winding or hoyſing of Wines, it happens that they leave open any of the Pipes, or other Veſſels, or that they faſten not the Ropes well at the ends of the Veſſel, by reaſon whereof it ſlips, and falls, and ſo loſt, or falling on another, both are damnified, or loſt; In theſe Caſes the Maſter and Mariners are bound to make them good to the Merchants, and the Merchants muſt pay the Fraight of the ſaid damnified or loſt Wines, becauſe themſelves are to receive for them from the Maſter and Mariners, according to the value that the reſt of the Wines are ſold for; And the Owners of the Ship ought not to ſuffer hereby, becauſe the damage happened by default of the Maſter and Mariners, in not faſtning the ſaid Veſſels of Wine.

What the Law is in caſe of damage to goods, by reaſon of the Ship-ropes or Slings in hoyſing of goods over board.

XXV.

If two Veſſels go on a Fiſhing deſign in

What the Law is as to Partnership in the Fishing Craft.

Partnership, as for Mackerel, Herring, Rayes, or the like, and do set their Nets, and lay their Lines for that purpose; The one of the Vessels ought to imploy as many Fishing Engines as the other, and so shall go in equal shares as to the gain, according to the Agreement betwixt them made. After this, if it so happen, that one of the said Vessels with her Fishing Instruments and Engines perish, the other escaping, arrive in safety; the surviving friends of those that perished, may require of the other to have their part of the gain, as also of their Fish and Fishing Instruments; And they are to have it accordingly upon the Oaths of those that escape; But in or of the Vessel it self, they are to have nothing.

In case of such Partnership, part of the profits upon such a Fishing design, accrue to the next of kin, to the deceased in that design.

XXVI.

If any Ship or other Vessel sailing to and fro, and Coasting the Seas, as well in the way of Merchandizing, as upon a Fishing design, happen by some misfortune through the violence of the Weather to strike her self against the Rocks, whereby she becomes so bruised and broken, that there she perishes, be it on what Coasts, Country or Dominion soever, and the Master and Mariners, Merchant or Merchants, or any one of these escape and come safe to Land; In this Case the Lord of that place or Country, where such misfortune shall happen, ought

ought not to let, hinder, or oppoſe ſuch as have ſo eſcaped, or ſuch, to whom the ſaid Ship, or Veſſel, and her Lading belong, in uſing their utmoſt endevour for the preſervation of as much thereof as may poſſibly be ſaved. But contrariwiſe, the Lord of that place or Country, by his own intereſt, and by thoſe under his power and Juriſdiction, ought to be aiding and aſſiſting to the ſaid diſtreſſed Merchants and Mariners, in ſaving their Ship-broken-goods, and that without the leaſt imbezilment or taking any thereof from them. Nevertheleſs there may be a Remuneration or Conſideration for Salvage to ſuch as took pains therein, anſwerable to their Conditions, according to right Reaſon, and a good Conſcience, and as Juſtice ſhall appoint, notwithſtanding what promiſe in that Caſe was made to the Salvers by ſuch diſtreſſed Merchants and Mariners, as before is declared: And in caſe any ſhall do contrary hereunto, or take any part of the ſaid goods from the ſaid poor, diſtreſſed, ruin'd, undone, *Ship-broken* perſons, againſt their wills, and without their conſent, they are Excommunicated by the Church, and ought to receive the puniſhment of Thieves, without ſpeedy Reſtitution be made by them; And there is no Cuſtome or Statute whatever that can protect them againſt the ſaid penalties.

Ship broken, men not to be impeded or hindred, but aided and aſſiſted in preſervation of Ship and Lading.

Salvage to be regulated, not according to promiſe made by the diſtreſſed, but as the Court of Admiralty ſhall judge in equity.

Art. 4. *Naufragium, quaſi Navis Fractio.* The penalty of ſuch Thieves as ſteal from perſons that are Ship-broken.

XXVII.

If a Ship or other Veſſel entring into an Harbour, or elſewhere, happen by misfortune to be broken and periſh, inſomuch that the Maſter, Mariners, and Merchants, which were on board her, are all drowned; ſo that the Goods thereof in part are driven a ſhore, the reſt floating on the Sea, without being ſought after by thoſe to whom they belong, they being ignorant of this ſad diſaſter, and knowing nothing thereof; In this Caſe, which is very lamentable, the Lord of that place or Country ought to ſend perſons to ſave the ſaid Goods, which he ought to ſecure and to put into ſafe cuſtody; and thereof ought alſo (if it may be) to give notice to the Friends or next of Kin to the deceaſed, and to ſatisfie for the ſalvage thereof, not out of his own purſe, but of the Goods ſaved, according to the hazard and pains taken therein; and the remainder to reſerve in ſafe cuſtody for one year or more; And if in that time they to whom the ſaid Goods did appertain, do not appear and claim the ſame, and the ſaid year or more be fully expired, he may publickly ſell and diſpoſe thereof to ſuch as will give moſt, and with the monies proceeding of the ſale thereof, he is to procure prayers to be made for the * *Remiſſion of the ſins of the deceaſed*, or to provide

What the Law is in caſe of wreck.

* As if the gift of Salvation might be purchaſed with mony. Good meanings will never exculpate blind and ſuperſtitious Devotion.

This is the Law of *Rome* by Land at this day, as well as of *Oleron* at Sea, nigh 500 years ſince.

provide Marriages for poor Maids, and to do therewith such other works of piety and charity as is consonant to Reason and a good Conscience. But if he assume the said goods either in whole or in part unto himself, he shall incur the Curse or Malediction of our Mother the holy Church, with the foresaid pains and penalties, without ever obtaining Remission, unless he make satisfaction.

XXVIII.

If a Ship or other Vessel happen to be lost by striking on some Rock, or elsewhere nigh the shore, and the Mariners thinking to escape and save their lives, attempt to come nigh the shore or brink of the Sea in hope of help, but instead thereof it sometimes happens that in many places they meet with people more barbarous, cruel, and inhumane, then mad Dogs, or enraged Wolves, who to gain their monies, apparel, and other goods, do sometimes murder and destroy these poor distressed Mariners; In this Case, the Lord of that Country ought to execute Justice on such Wretches, to punish them as well corporally as pecuniarily, and in their goods, and they are to be plunged into the Sea until they be half dead, then to be drawn forth out of the Sea, and stoned or knock'd down as you would do even to a Dog or a Wolf.

Covetousness which is *Idolatry*, sometimes is also *Bestiality*.

They that lived like beasts, might not dye like men; by the Law of Moses.

XXIX. If

XXIX.

If a Ship or other Veſſel arriving at any place, and making in towards a Port or Harbour, ſet out her Flag, or give other ſign to have a Pilot come a board, or a Boat to towe her into the Harbour, the Wind or Tide being contrary, and Contract be made for Piloting the ſaid Veſſel into the ſaid Harbour accordingly; But (by reaſon of an unreaſonable, yea, accurſed and damnable cuſtome in ſome places, That the third or fourth part of the Ships that periſh and are loſt, ſhall accrue to the Lord of the place where ſuch ſad Caſualties happen; as alſo the like proportion to the Salvers, and only the remainder to the Maſter, Merchant, and Mariners) the Perſons contracting for the Pilotage of the ſaid Veſſel, to ingratiate themſelves with their Landlords, and to gain to themſelves part of the ſaid Ship and her Lading, do like faithleſs Villains and treacherous perſons ſometimes even wittingly, willingly, and out of deſign to ruine Ship and Goods, guide and bring her upon the Rocks; And then feigning to aid, help, and aſſiſt the now diſtreſſed Mariners, themſelves are the firſt in diſmembring and pulling the Ship to pieces; Then purloyning and carrying away the Lading thereof contrary to all Reaſon and a good Conſcience; And that they may be the more welcome to their

Behold and wonder at the Diabolical Practice of ſome treacherous Pilots.

their Landlord, do with all ſpeed poſt to his houſe with the ſad Narrative of this unhappy diſaſter; whereupon the ſaid Landlord with his Retinue appearing at the place takes his ſhare, the Salvers theirs; and what remains the Merchants and Mariners may have. But ſeeing this is contrary to the Law of God, the Edict and Judgement is, That (notwithſtanding any Law or Cuſtome to the contrary) the ſaid Lord of that place, Salvers, and all others that take away or embezil any of the ſaid Goods, ſhall be Accurſed, Excommunicated, and puniſhed as Robbers and Thieves, as formerly hath been declared.

The penalty of ſuch thieves as ſteal goods from poor diſtreſſed ſhipbroken perſons.

XXX.

Touching ſuch falſe and treacherous Pilots, the Judgement is, That they ought to ſuffer a moſt rigorous and unmerciful death; For there ought to be very high Gibbets erected for them in the very ſame place, or as nigh as conveniently may be, where they ſo guided and brought the ſaid Ship or Veſſel to ruine as aforeſaid, and thereon theſe accurſed Pilots are with ignominy and moſt ſhamefully to end their days; Which ſaid Gibbets are to be made ſubſtantially ſtrong, to the intent that they may abide and remain to ſucceeding ages on that place, as a viſible Caution to other Ships that ſhall afterwards ſail thereby.

The exemplary puniſhment of all treacherous Pilots.

XXXI. If

XXXI.

If the ſaid Lord of that place were ſo felonioufly inclined, and ſo barbarous withal, as not only to permit ſuch inhumane people, but alſo to maintain and abet them in ſuch villanies, that he may participate of the ſpoil, and have a ſhare in ſuch Wrecks; In ſuch caſe the ſaid Lord of that place ought to be apprehended, all his goods confiſcate, and ſold to be converted into pious uſes, and for reſtitution and ſatisfaction to ſuch as of right it appertaineth; And himſelf to be faſtned to a poſte or ſtake in the midſt of his own Manſion houſe, which being fired on the four Corners or quarters thereof, all are to be burnt together; which done, the walls thereof are to be demoliſh'd, the ſtones thereof pull'd down, turn'd to rubbiſh, and then to be converted to a Market place, for the ſale only of Hogs and Swine to all poſterity.

An Adequate punishment & without reſpect of perſons; which will not counterpoize one grain of honeſty in the ballance of Juſtice; So exact was this Law in puniſhing ſuch politickly Covetous Miſcreants.

XXXII.

If by reaſon of tempeſtuous weather it be thought expedient, for the lightning of any Ship or Veſſel at Sea, or riding at Anchor in any Road, to caſt part of the Lading over board, and it be ſo done accordingly for the preſervation of themſelves; I know, that

that the said goods so ejected and cast over board do become his that can first possess himself thereof, and carry them away; Nevertheless, it is here to be farther known and understood, that this holds true only in such case, as when the Master, Merchant, and Mariners have so ejected or cast out the said goods, as that withall they quit all hope or desire of ever recovering them again, and so leave them as Derelict, or as things utterly lost and forsaken, without ever making any inquiry or pursuit after them; In which Case only, the first Occupant becomes the lawful Proprietor thereof.

Goods cast over board for lightning the Ship, *quatenus* such, are not Derelicts.

Merces è Nave jactæ, Derelictæ non videntur.

Leg. 7. Dig. Pro Derelict.

XXXIII.

If a Ship or other Vessel hath cast over board several Goods or Merchandize, which are in Chests well lock'd and made fast; or Books so well secured, and so well conditioned, that they may not be damnified by Salt-water; In such cases it is to be presumed, that they who did cast such Goods over board, do still retain an intention, hope, and desire of recovering the same; For which reason such as shall happen to find such things, are obliged to make Restitution thereof to him who shall make a due inquiry or pursuit after them; or at least to imploy them in charitable uses according to a good Conscience.

What symptomes for a Presumption in certain cases of goods cast over board, that they are not Derelict.

XXXIV. If

XXXIV.

Res nullius, & Noviter inventa, sit primo Occupantis.

If any man happen to find any thing in the Sea, or Sea-ſand, or on the Shore, (be it precious ſtones, Fiſhes, or the like, which never belonged to any man in point of property) it becomes his own; for ſuch things belong to the firſt finder, who carries it away.

XXXV.

Now called *Royal Fiſhes.* Out of the mouth of a Fiſh the King of Kings himſelf will work a Miracle to pay Tribute, rather then offend by denying it where it is due. Matth. 17.27.

Touching Great Fiſhes that are taken or found dead on the Sea-ſhore, regard muſt be had to the Cuſtome of that Country where ſuch Great Fiſhes are taken or found; For by the Cuſtome the Soveraign Prince of that Country ought to have his ſhare, his demand or pleaſure therein. And good reaſon, for the Subject owes Obedience and Tribute to his Soveraign.

XXXVI.

In ſuch things Cuſtome is to be obſerved.

In ſome Caſes alſo the Lord of the place where ſome Fiſhes are found may have his ſhare, reſpect being always had to the laudable Cuſtome of the Country where ſuch Fiſhes are found; And he that there finds them is no farther obliged then to ſave them by

by bringing them without the reach of the Sea, and then forthwith to make it known to the ſaid Lord of the place, that ſo ſuch care may be taken therein as appertaineth to Juſtice.

XXXVII.

If the Lord of the place pleaſe, and it be the Cuſtome of that Country where the ſaid Fiſh was found, he may cauſe the ſame to be brought to him that found it, or to the publick and open Market-place, but to no other place; And there the ſaid Fiſh ought to be Inventaried and Appraiſed by the ſaid Lord according to the cuſtome. And the price being ſet, the other party that made not the price, ſhall have his choice or election either to take or leave at that price; And if either of them whether *per fas*, or *nefas* be an occaſion of loſs or damage to the other, though but to the value of a Deniere, he is obliged to make him Reſtitution.

Conſuetudo in tract of time may evaporate into *Deſuetudo*; as in this Caſe.

XXXVIII.

If the Coſts and Charges of carrying the ſaid Fiſh to the ſaid Market-place, may probably amount to a greater ſumme then the Fiſh it ſelf may be worth, then the ſaid Lord is bound to take his ſhare at the place where ſuch Fiſh was found.

This hath reference only to ſuch times and places, as wherein ſuch Cuſtome did prevail.

XXXIX. Alſo

XXXIX.

Also the said Lord ought to submit to the foresaid Costs and Charges, for that he ought not by anothers damage to inrich himself; otherwise he sins.

Locupletari nemo debet cum alterius injuria. Leg. 14. tit. 6. Cod. lib. 5. & Dig. lib. 23. tit. 3. leg. 6. § 2. & Dig. lib. 2. tit. 15. leg. 8. § 22. & Dig. lib. 12. tit. 6. leg. 14.

XL.

If by some chance or misfortune the said Fish happen to be lost, or otherwise stolen away from the place where it was first found, and this about the time of the said Lords going to see it, or before; in this Case he that first found it is not any way obliged to make it good.

Non tam tenetur, qui non tenet, quam qui detinet.

XLI.

In all other things found by the Sea-side, which have formerly been in the possession of some or other, as Wines, Oyls, and other Merchandize, although they have been cast overboard, and left by the Merchants, and so ought to appertain to him that first finds the same; yet herein also the Customs of the Country is to be observed as formerly in the Case of Fish. But in case there be a presumption

Consuetudo est lex non scripta, & Natura postscripta.

presumption that these were the Goods of some Ship that perished, then neither the said Lord, nor Finder thereof, ought to take any thing thereof so as to convert it to their own use; but they ought to doe therewith as before hath been said, that is, to cause therewith that Prayers be made for the deceased, as also other special good works; Or otherwise they shall incur the forementioned Maledictions.

Goods found and presumed to have belonged to Shipping, are dedicated not to profane but pious uses.

Art. 26.

If in Heaven, they need no Prayers; if in Hell, *Ab inferis nulla Redemptio*; if in Purgatory, 'tis pity to trouble them, the longer there, the better purged; This is *Romes Utopia*.

XLII.

If any Ship or other Vessel at Sea happen to find a Fish, it is wholly theirs that found it, in case no due pursuit be made after it; And no Lord of any place ought either to challenge it or demand any part thereof, although they bring it to his ground.

Res capta fit Capientis, was Law well meant at *Oleron*; but very ill expounded by our late Interpreters.

XLIII.

If any seek for Gold or Silver on the Seashore, and findeth some; he ought to restore it all, without any diminution thereof.

Presupposing the Finders knowledge of of the true Owner thereof.

XLIV.

What the Law is in Case of Treasure Trove.

If any going along the Sea-shore to fish, or otherwise, happen to find Gold, or Silver, or the like, he is bound to make restitution thereof, deducting for his own pains; Otherwise if he be poor, he may retain it to himself, that is, if he know not to whom to restore it; yet he ought to give notice of such his finding the same, to the neighbourhood and parts next adjacent to the place where he found it. Moreover he ought to advise with his Prelate, Curate, or Confessor, who ought to weigh and take into Consideration the indigency and poverty of the Finder, and the quantity of the Silver, and then to give him such advice as is consonant to a good Conscience.

You may not Note or infer hence, as if in all Ages the Clergie had a finger in all Elements.

XLV.

What the Law is in case a Ship by stresse of weather be forced from her Cables and Anchors.

If a Vessel by stress of weather be constrained to cut her Towes and Cables by the end, and so to quit and leave behind her both Cables and Anchors, and make to Sea as please the wind and weather; in this Case the said Cables and Anchors ought not to be as lost to the said Vessel, if there were any Boy at them; And such as fish for them are bound to restore them, if they know to whom: but withal they ought to be paid for

for their pains, according as Juſtice ſhall determine. But becauſe ſometimes they know not to whom to reſtore them, the Lords of the place have their ſhares, and the Finders theirs; and they neither cauſe *Pater Noſter* to be ſaid, nor *Avie Maria*, as they ought. And therefore it hath been ordained, That every Maſter of a Ship cauſe to be ingraven, or ſet upon the Boyes thereof, his own name, or the name of his Ship, or of the Port or Haven whereof ſhe is; which will prevent great inconveniencies; for it ſometimes happens, that he that left his Anchor in the morning, hath recovered it again by night; And ſuch as detain it from him, are no better then Thieves and Pirates.

Well meaning devotion in a Superſtitious way, opens a dore to Idolatrie; And Politick devotion in an hypocritical way Lets in Blaſphemy.

The Names of Skippers or of their Ships to be engraven on their Boyes.

XLVI.

If any Ship, or other Veſſel by any Caſualty or misfortune happen to be wreck'd and periſh; in that caſe the pieces of the bulk of the Veſſel as well as the Lading thereof ought to be reſerved and kept in ſafety for them to whom it belonged, before ſuch diſaſter happened, notwithſtanding any Cuſtome to the contrary. And all takers, partakers, abettors, conſenters, or contrivers in the ſaid wreck, if they be Biſhops, Prelates, or Clerks, they ought to be depoſed and deprived of their Benefices reſpectively; And if they be Lay-men, they are to incur the penalties aforeſaid.

What the Law is in caſe of Wreck.

XLVII.

Pirates and other unreasonable men are to be dealt with like other irrational Animals.

Which is to be so understood, when the said Ship or Vessel so wreck'd did not exercise the Thievish mystery of Robbing and Free booting, and when the Mariners thereof are not Pirates, Sea-Rovers, or Enemies to our holy *Catholick* Faith. But in case they be Pirates, Robbers, Sea-Rovers, Turks, or other Enemies to our said *Catholick* Faith, every man may then deal with such as with meer Brutes, and despoil them of their goods without any punishment for so doing.

Catholick signifies General or Universal; But *Orthodox* hath a far better Signification.

A

SERIES or Catalogue (according to *Sir H. Spelman's* Computation) of ſuch as have been Dignified with the Office of *Lord High Admiral* in this Kingdome, ſince K. *John's* time to to the Reign of King *Charles* the *Firſt* of Bleſſed Memory.

Wherein

No mention is made of *Marthuſius*, that *Princeps Nautarum*, in K. *Edgars* time; Nor of thoſe other *Tetrarchs* of his Navy, who for the guard of the *Britiſh* Seas had no leſs then a thouſand Sail of Ships under their Command; Nor of thoſe other Commanders in Chief touching the Sea-Affairs, who have been, beſide the common and uſual mode, Conſtituted by his Succeſſors, Kings of *England*; But of ſuch only, as in the Ordinary way have been Dignified with the ſaid Office and Marine Authority in this Kingdome, *viz.*

8 H. 3. RIchard *de Lucy* is ſaid to have *Maritimam Angliæ.*

48 H. 3. *Thomas de Moleton* was Constituted *Capitaneus & Custos maris & Portuum Maritimorum.*

25 Ed. 1. *William de Leiburne* is styled at the Assembly at *Bruges*, 8 Martii, 15 Ed. 1. 1286. *Admirallus maris Anglie.*

22 Ed. 1.
- *John de Botetort*, Admiral of the *North*, for the Coast of *Yarmouth*, and that station.
- *William de Leibourn*, Admiral of the *South*, for *Portsmouth*, and that station.
- A certain *Irish* Knight, Admiral of the *West*, and the parts thereof.

Admirals of the *North*, viz.	Admirals of the *West*, viz.
From the mouth of the River of *Thames* North-ward.	From the mouth of the River of *Thames* West-ward.
34 Ed. 1. *Edward Charles.*	*Gervase Allard.*
8 Ed. 2. *John Botetort.*	*William Cranis.*
	10 Ed. 2. *Nichalds Cryoll.*
10 Ed. 2. *John Perbrun*, alias *Perburn.*	*Robert Leiburn*, Knight.
	12 Ed. 2. *John Athey.*
	15 Ed. 2.

15 Ed. 2. *John Perburn.* *Robert de Leiburn*, Knight, Admiral of the Western Ports of *England*, *Wales*, and *Ireland*.

16 Ed. 2. *John Perburn.* *Robert Battail*, alias *Batall*, one of the Barons of the Cinque-Ports.

18 Ed. 2. *John Sturmy.* *Robert Bendon.*

19 Ed. 2. *John Otervin.* *Nicholas Keriel.* } *Walsingh.* calls
John de Felton. }

these the three Admirals of the three Coasts of *England*, *viz.* of *Yarmouth*, *Portsmouth*, and the *West*. And here note, That the *South* Coast is comprehended in the *West*.

19 Ed. 2. *John de Stormy.* *Nicholas Criell.*

20 Ed. 2. *John Sturmy.* *Nicholas Criell.*

20 Ed. 2. *John Layborne.*

1 Ed. 3. *John Perbrun.* *Waref. de Valoniis.*

7 Ed. 3. *William de Clinton.*

8 Ed. 3. *John de Norwico.* *Roger de Hegham*, alias *Higham*.

10 Ed. 3. *Thomas Ughtred.*

16 Ed. 3. *John de Norwico.* *Walter de Say*, Baronet.

10 Ed. 3. *Robert Ufford*, & *John de Roos.* *Admiralli Flotæ.* *William de Manton.*

11 Ed. 3. *Walter de Manney.* *Barthol. de Burgherſhe*, Kt.

12 Ed. 3. *Thomas de Draiton.* *Peter Dardus*, aſiàs *Bard.*

This *Thomas* elſewhere appears not as *Admiral*, but only as *Vice-Admiral* to *Walter de Manney*: So poſſibly in ſome others there may be ſome Errors alſo.

13 Ed. 3. *Robert Morley, Bar. de Hengham.* *Robert Truſſell.*

14 Ed. 3. *Richard, Fil. Alani, Com. Arundeliæ.*

15 Ed. 3. *Robert de Morley.* *William Clinton, Com. Huntingd.*

16 Ed. 3. *William Truſſel.* *Robert Beaupell.*

17 Ed. 3. *William Truſſell.* *John de Monte Gomerico.*

18 Ed. 3. *Robert Uffer. Com. Suffolk.* *Reignald de Cobham.*

19 Ed. 3. *Richard, Fil. Alani, Com. Arundeliæ.*

20 Ed. 3.

20 Ed. 3. *Robert de Ufford*, *Comes Suff.* — *Richard, Fil. Alani, Com. Arundeliæ.*

21 Ed. 3. *John de Howard*, Knight. — *John de Monte Gomerico*, Knight.

22 Ed. 3. *Walter de Manny*, *Bar. S. Salvato.* — *Reignald de Cobham*, Knight.

24 Ed. 3. *Robert de Cauſton.* — *John de Bello Campo*, Knight of the Noble Order of the Garter.

25 Ed. 3. *Robert de Morley.*

25 Ed. 3. *William de Bohun. Com. Northampt.* — *Henry* D. of *Lancaſter.*

26 Ed. 3. *William de Bohun. Com. Northampt.* — *Tho. de Bello Campo, Senior, Com. Warwicen.*

29 Ed. 3. *Rob. de Morley*, *Bar. de Hengham.* — *John de Bello Campo*, Brother to the ſaid *Thomas.*

30 Ed. 3. *Robert de Morley.* — *Guido de Brian*, Knight.

31 Ed. 3. *Guido de Brian.*

33, 34 Ed. 3. *Robert de Morley.* — *Guido de Brian.*

34 Ed. 3. *John de Bello Campo* aforeſaid, was Conſtituted High Admiral as well of the *North* as of the *Weſt* of *England*,

land, 18 *Julii*, 34 *Ed.* 3. At which time he was alſo Lord Warden of the *Cinque-Ports*, Conſtable of the Tower of *London*, and of the Caſtle of *Dover*; And dyed *Decemb.* 2. the ſame year in poſſeſſion thereof.

35 Ed. 3. *Robert Herle*, Knight. *Admirallus omnium Flotarum utriuſque partis.*

38 Ed. 3. *Ralph Spigornell.* *Admirallus utriuſque partis.*

43 Ed. 3. *Nicholas Tamworth*, Knight. *Robert Aſton*, Knight.

44 Ed. 3. *John Nevill*, Kt. Bar. *de Raby.* *Guido Brian.*

45 Ed. 3. *Ralph de Ferrariis.* *Robert Aſton*, Knight.

46, 47, 48 Ed. 3. *W. de Nevill.* *Phillip Courtney.*

50 Ed. 3. *William de Ufford*, *Com. Suff.* *William de Monteacuto.*

50, 51 Ed. 3. *Mich. de la Poole*, Knight, *Dn. de Wingfield.* Brother of *Rob. de Hales*, Prior of the Hoſpitall of S. *Jo.* of *Hieruſalem.*

1 R. 2. *Thomas de Bello Campo*, *Jun. Com. War.* *Richard, Fil. Alani. Com. Arundel.*

2 R. 2. *Thomas Percy*, *Frat. Com. Northumb.* *Hugh Calveley*, Knight.

3, 4 R. 2.

3, 4 R. 2. *William de Elmham*, Knight. — *Phillip Courtney*, Knight.

5 R. 2. *William de Elmham.* — *John Roches*, Knight.

6 R. 2. *Walter*, Knight, *Dn. de Woodham.* — *Fil. Walt. John Roches*, alias *de Rupibus*, Knight.

7 R. 2. *Henry Percey, Com. Northumb.* — *Edward Courtney, Com. Devon.*

8 R. 2. *Tho. Percey, Frat. Hen. Com. Northumb.* — *Jo. Radington*, Prior of Saint *John* of *Hierusalem.*

9 R. 2. *Phillip Darcy*, K^t^ — *Thomas Trivet*, Knight.

10 R. 2. *Richard, Fil. Alani, Com. Arundel, Admirallus Angliæ.*

12 R. 2. *Jo. de Bello monte, Bar. de Folkingham.* — *Jo. Holland, Com. Huntington.*

12 R. 2. *Jo. de Rupibus*, Kt.

13 R. 2. *Jo. de Bello monte, predict.* — *Jo. Holland, Com. predict.*

14 R. 2. *Edward Com. Rutland.* — *Jo. Holland, Com. predict.*

15 R. 2. *Edward, Com. Rutland, & Corcagiæ*, afterwards D. of *Albemarle.* Constituted high Admiral as well of *North* as *Western* parts.

21 R. 2.

21 R. 2. *John Beaufort*, Marq. *Dorſet*, *& Com. Somerſet. Fil. Jo. de Gandavo*, D. of *Lancaſter*, Admiral of *North* and *Weſt*.

21 R. 2. *Thomas Percey*, *Com. Wincheſter*, *Frat. Hen. Com. Northumb.* he was then Conſtituted Admiral of both parts.

2 H. 4. *Rich. Gray*, *Bar. de Codenore.* *Thomas Reniſton*, Knight.

5 H. 4. *Tho. Beaufort*, *Frat. prad.* Marq. *Dorſ.* *Tho. Dom. Berkley*, Knight.

7 H. 4. *Nicholas Blackburn*, Eſquire. *Richard Cliderhow*, Eſquire.

Admirals of *England*, &c.

6 H. 4. *Tho. Lancaſtrius*, Reg. H. 4. *Fil.* Vice-Roy of *Ireland*, high Steward of *England*; afterward D. of *Clarence*. *Admirallus utriuſque partis.*

8 H. 4. *John Beauford, pradict. Com. Somerſet. Admirallus Anglia.*

8 H. 4. *Edmund Holland*, Earl of *Kent*. *Admirallus Anglia.*

9 H. 4. *Thomas Beuford, prad.* *Adm. Anglia.*

4 H. 6.

4 H. 6. *John Lancaſtriæ*, D. of *Bedford*, E. of *Richmond* and *Candale*, high Conſtable of *Engl. Fil.* Reg. H. 4. *Admirallus Angliæ.*

14 H. 6. *Joh. Holland*, D. of *Exon.* E. of *Huntington.* Conſtituted (together with his ſon) Admirals of *England*, *Ireland*, and *Aquitain*, for life.

25 H. 6. *Will. de la Poole.* Mar. & E. of *Suffolk*, made Admiral of *England*, *Ireland*, and *Aquitain*, during the minority of *Hen.* D. of *Exon*; who with his Father had that Office by the Kings Grant, *ad terminum vitæ eorum*, &c.

28 H. 6. *Hen. Holland*, D. of *Exon.* *Adm. Angliæ, Hiberniæ & Aquitaniæ.*

1 Ed. 4. *Rich. Nevil*, *Comes Warwic. & Sarisb.* Admirall of *England*, *Ireland & Aquit.*

2 Ed. 4. *Will. Nevil*, E. of *Kent*, & *Bar. Falconberg.* Adm. of *Engl. Ireland*, & *Aquit.*

Ed. 4. *Richard* D. of *Glouceſter*, Brother to the King; Adm. of *Engl. Irel. & Aquit.*

49 H. 6. *Rich. Nevil*, E. of *Warwic. & Sarisb.* Capt. of the Town and Caſtle of *Calice.* Conſtable of the Caſtle of *Dover*, & *Cuſtos* 5. *Portuum.* *Adm. ut ſupra.*

11 Ed. *Richard* D. of *Glouceſter*, *prædict.* Conſtituted Admiral, *ut ſupra.*

1 R. 3. *John Howard*, D. of *Norfolk*. Adm. of *Engl. Ireland & Aquit.*

1 H. 7. *Jo. de Veer*, E. of *Oxford*, high Chamberlain of *England*, &c. Adm. *ut ſupra.*

4 H. 8. *Edw. Howard*, Knight, *Fil. Tho.* E. of *Sur.* afterwards D. of *Norf.* Adm. *ut ſupra.*

5 H. 8. *Tho. Howard*, eld. brother of the ſaid *Edw.* E. of *Sur.* afterwards D. of *Norf.* Adm. *ut ſupra.*

17 H. 8. *Henr. Fil. Nothus*, Reg. H. 8. D. of *Richm. & Somerſ.* E. of *Nottingh.* Adm. *ut ſupra.*

28 H. 8. *Will. Fitz William*, E. of *Southampt.* Adm. *ut ſupra.*

32 H. 8. *John Ruſſel*, Knight, *Dom. Ruſſel.* Admirall, *ut ſupra.*

34 H. 8. *John Dudley*, Knight, *Vicecom. Inſula, & Bar. de Malpas*, &c. Adm. *ut ſupra.*

1 Ed. 6. *Tho. de S. Mauro (Vulg. Seimor)* Knight, *Dom. de S. Mauro de Sudley*, Brother to *Edw.* D. of *Somerſ. Adm. Angl. Hib. Wallia, Caleſ. Bolognia*, &c.

3 Ed. 6. *John Dudley*, E. *Warwic. Vicecom. Liſley*, &c. *Magnus Admirallus Angl. Hib. Wall. Caleſ. Bologn. & Marchiarum earundem, Normannia, Gaſconia, & Aquitania*; Alſo *Præfect. Gen. Claſſis & Maritim Regis*, &c.

4 Ed. 6.

4 Ed. 6. *Edw. Clinton*, Knight, *Bar. Clinton*, & *Saius.* Admiral, *ut ſupra.*

1 Mar. *Will. Howard*, Knight, *Bar. Effingham.* Adm. *ut ſupra.*

3 Mar. *Edw. Clinton*, Knight, *Bar. Clinton & Saius.* Adm. *ut ſupra.*

27 Eliz. *Charles* Lord *Howard*, Knight of the Noble Order of the Garter, *Baro de Effingham*, E. of *Nottingh. Magn. Adm. Angl. Hiber. ac Dominiorum & Inſularum earundem Villæ Caleſiæ & Marchiarum ejuſdem, Normandiæ, Gaſconiæ, & Aquitaniæ*; Alſo, *Prafect. Gen. Claſs. & marium dict. Regnorum.*

16 Jac. *Georgius*, *Marchio & Com. Buckingh. Vicecom. Villers*, *Baro de Whaddon*, *Deinde* D. *Buckingh.* Knight of the Noble Order of the Garter, *&c.* Conſtituted *Magn. Adm. ut ſupra.*

Non eſt dubium (uti *Spelman*) quin perplures Procerum iſtorum, Equites fuerint Periſcelidis ſive Garterii; Sed cum id ſibi non prompte innotuerit, aliis reliquit diſquirendum.

AN

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